

## **AGENCY SHOP ELECTION – PART II**

### **Reason for Grand Jury Reply to Board of Supervisor Responses**

The Nevada County Grand Jury (Jury) submitted its Report on the Agency Shop Election on January 23, 2008 (the Report). The Nevada County Board of Supervisors (BOS) submitted its Responses to the Report on April 8, 2008.

The Jury wishes to express its appreciation for the BOS's recognition of the flawed notice procedure used in the August 15, 2007 Agency Shop Elections, and especially its willingness in future union elections to direct County officials to seek a notice process more likely to assure employee awareness of such elections and their issues.

The Responses of the BOS, however, reflect, in the judgment of the Jury, a misunderstanding of the issues that the Jury raised, perhaps because of erroneous factual conclusions.

The Jury undertook its investigation of the Agency Shop Elections after receipt of complaints from more than 30 County employees that they had had no notice of the elections. The Jury, as a part of its investigation, sought the advice of the office of County Counsel regarding the extent of its authority to investigate the issue of the election notice. Not surprisingly, the Jury was advised that it had no jurisdiction over the State Mediation and Conciliation Service, the Public Employment Relations Board (PERB) or Stationary Engineers, Local 39 (Union). That same advice assured the Jury that it had jurisdiction to inquire into the conduct of the County's Department of Human Resources (HR), the County agency that undertook to represent the County's interests in these elections.

### **The Notice Process**

The Responses of the BOS to the Report on the issue of the notice process stress:

1. That the Memoranda of Agreement for Agency Shop Elections (Election MOAs) did not state who should post the notice, nor in how many locations the notice should be posted;
2. That a representative of the Union posted the required notice on or before August 9, 2007, and
3. That only five days notice was required, not five working days notice.

The Jury agrees that the Election MOAs did not specify who, as between the Employer County and the Union, was to post the notice. However, it is clear from the evidence gathered by the Jury that the Mediation and Conciliation Service and the County HR Department thought (and conducted themselves on that basis) that the duty of notice fell on the County. The County's HR Director (who was candid and forthcoming before the Jury)

sought the advice of the Mediation and Conciliation Service on the meaning of “working days” – did they include Saturdays and Sundays? Answer - yes. What is a “conspicuous place on the premises of the” County for posting? Answer - employee bulletin boards.

The Jury’s view of the County’s understanding that it was responsible for the giving of notice is reinforced conclusively by the Mediation and Conciliation Service’s “Procedures for Mandated Agency Shop Elections” which were furnished to the County HR Department, and are attached hereto. Under “Conduct of Election,” Item 1, “Notice of Election” the procedure states “The employer (i.e., the County) will complete and submit an Affidavit of Posting.”

At no time in the Jury’s interaction with the HR Department was it ever suggested that the County expected the Union to give the required notice. The Jury, however, accepts the premise that if the Union posted notice of the election in conspicuous places at least five working days before the election, that would have satisfied the notice provisions of the Election MOAs and the Procedures.

The Union’s Affidavit of Posting (Affidavit) was not made available to the Jury prior to the release of the Jury’s January 23, 2008 Report. The BOS’s Responses were the Jury’s first knowledge of the claim that the Union satisfied the required notice or of the existence of the Affidavit. In the Union’s January 31, 2008 Press Release (a copy of which is attached hereto) responding to the Jury’s Report, no mention was made of the Union’s role in the giving of notice.

A copy of the Cover Page of the Union’s Affidavit, dated August 15, 2007 (the date of the elections) is attached hereto. The Affidavit reflects posting on or before August 9, 2007 “in the following places”, and for such places refers to “see attached list”. The Jury requested a copy of the Affidavit with the attached list from the Mediation and Conciliation Service’s Election Supervisor, who, under the Election MOAs, was to conduct the elections. The Election Supervisor provided the Jury with copies “of all documents related to this election including the specifically requested Affidavits of Posting and the list of posting locations.” There was no list of posting locations attached to the Union’s Affidavit. The County HR Department advised the Jury that it had never seen a list of locations posted by the Union.

The inability of the Mediation and Conciliation Service to provide a list of the locations where the Union posted notices of the August 15, 2007 elections makes it impossible to determine whether the Union’s posting efforts occurred in conspicuous places on County premises, assuming the Union’s notices were placed on employee bulletin boards. Moreover, the Union’s posting on August 9, 2007 would have given only four, not the required five, working days prior to the elections.

Lastly, the BOS’s Responses seem to conclude that the PERB definition of “work day” as meaning Monday through Friday has no application to matters arising under the Meyers-Milas-Brown Act (the Agency Shop Election Law). The suggestion made in Response to Jury Finding No. 1 is that “the five working days notice is a State Mediation Service procedural requirement for agency shop elections and not a legal requirement under the Meyers-Milas-Brown Act.” This Response is misleading. While the number of days notice is

to be given may well be within the discretion of the Mediation and Conciliation Service, as the BOS Response itself notes under its response to Recommendation No. 1, PERB has exclusive jurisdiction over agency shop elections and related issues. Exercising that jurisdiction, PERB has declared (as set forth in Attachment No. 6 to the Jury's Report) that "work day" or working day means Monday through Friday, not Monday through Sunday.

## **Findings**

1. The County was the party charged under the Mediation and Conciliation Service's Procedures with the giving of notice for the August 15, 2007 Agency Shop Elections.
2. In order to give five calendar days notice for an Agency Shop Election to be held on Wednesday, August 15, 2007, the notice would have had to be posted on or before Thursday, August 9, 2007, and in order to give five working days notice, excluding Saturday and Sunday, the notice would have had to be posted on or before Wednesday, August 8, 2007.
3. The County's posting of notice on Friday, August 10, 2007 failed to give the required five working days notice of the Agency Shop Elections. The County gave only three working days notice.
4. The Union's posting of notice on August 9, 2007 failed to give five working days notice of the Agency Shop Elections. The Union gave only four working days notice.
5. The Union's Affidavit, as provided by the Mediation and Conciliation Service, does not reflect the locations where the Union posted notices of the August 15, 2007 elections.

## **Conclusions**

1. The August 15, 2007 Agency Shop Elections were held without the advance notice required under the Election MOAs and the Mediation and Conciliation Service's Procedures. The elections should be declared null and void.
2. To the extent the Union posted notice of the August 15, 2007 Agency Shop Elections, there is no evidence in the records of the Mediation and Conciliation Service reflecting the location or manner of such posting.
3. The Union's notice efforts did not meet the requirements of the Election MOAs or the Mediation and Conciliation Service's Procedures.

## **Recommendations**

1. The BOS should send the Jury's Reports to the Mediation and Conciliation Service for its consideration.
2. In future union elections, the County should avail itself of the alternative provided in the Mediation and Conciliation Service's "Procedures for Mandated Agency Shop Elections" and distribute the notice to all bargaining unit members, in addition to the traditional posting of notices.
3. The BOS should determine whether Mediation and Conciliation Service procedures include permitting the County to use the County's electronic facilities (e-mail) to give employees notice of agency shop elections.

## **Attachments**

1. California State Mediation and Conciliation Services "Procedures for Mandated Agency Shop Elections"
2. Stationary Engineers Local 39 press release, dated January 31, 2008
3. Affidavit of Postings, dated August 15, 2007 as executed by the Business Representative of Stationary Engineers, Local 39

## **Responses**

Board of Supervisors September 30, 2008

info co had 5/4 interview of HIR Director 11/7/07

Procedures for mandated agency shop elections

The California State Mediation and Conciliation Service (SMCS) conducts agency shop elections in public agencies covered by the Meyers-Milius-Brown Act (Government Code 3500-3510), and in the trial courts (per Government Code 71632). The following procedures will be followed:

Request for Election

Only a recognized employee organization that is the exclusive or majority bargaining agent of the employees in the bargaining unit has the authority to request an agency shop election. The organization must submit the documents described below in order to proceed to election.

1. An election request (the SMCS Agency Shop Election Request Form may be used), which includes:
  - a. the name, address, telephone number and contact person for the employee organization;
  - b. the name, address, telephone number and contact person for the employer;
  - c. a description of the bargaining unit for which the election has been requested;
  - d. the name(s) and classification(s) of any bargaining unit member(s) designated supervisory, management or confidential (if known);
  - e. the approximate number of employees in the bargaining unit;
  - f. a statement certifying that the employee organization has requested the employer to negotiate an agency shop arrangement and, beginning seven working days after receipt of the request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement.
  - g. a statement certifying that an agency shop election has not been held in the bargaining unit within one (1) calendar year of the date of the request; and
  - h. proof of service indicating that a copy of the election request has been served on the employer.
2. A petition signed by at least thirty percent (30%) of the employees in the bargaining unit, stating that the employees request an agency shop arrangement and an election to implement the agency shop arrangement. The petition must include the printed name and signature of each employee, the employee's classification, and the date he or she signed the petition. The SMCS form, "Petition for Agency Shop Election" may be used for this purpose.

Investigation of Petition

Upon receipt of the election request and other required documents, SMCS will contact the employer to request the information necessary to verify the showing of interest. The employer will provide an alphabetical list of employees in the bargaining unit to assist SMCS in the investigation of the petition. The list will include the employees' classifications, and will identify any bargaining unit employees designated supervisory, confidential, or management. The information will be provided as soon as possible, but not later than fifteen (15) business days after the request has been made.

Upon determination of the existence of the requisite showing of interest, SMCS will assign an Election Supervisor to conduct the election.

Conduct of Election

In the absence of an agreement between the parties as to the manner in which the election will be conducted, the Election Supervisor will have the discretion to determine the terms of the election. In the absence of an agreement as to the ballot language, the Election Supervisor will determine the ballot language. In the absence of agreement as to the payroll period upon which the list of eligible voters is based, the last complete payroll period prior to the date of the election will be used.

1. **Notice of Election:** The Election Supervisor will provide the parties with a notice of election to be posted or distributed to the affected employees. The notice must be posted in a conspicuous location on the employer's premises, or distributed to all unit members, at least five (5) working days before the date of the election. The notice will state the time and place of the election, and will include a copy of the proposed agency shop provision and a sample copy of the ballot. The employer will complete and submit an Affidavit of Posting.
2. **Observers:** The employer and the employee organization may each station one authorized observer or representative at each voting place during the election. Under the direction of the Election Supervisor, the observers may assist in the identification of voters, challenge voters and ballots, and otherwise assist the Election Supervisor. The parties will provide the names of the observers to the Election Supervisor. Failure to appoint an observer or failure of an observer to appear will be deemed a waiver of the right to station such observer.
3. **Secret Ballot:** The election will be conducted by secret ballot. All voters will be allowed to vote without interference, restraint or coercion.
4. **Challenged Votes:** Any observer or the Election Supervisor may challenge the eligibility of a voter. The Election Supervisor will mark the outer envelope containing the challenged ballot and subsequently determine the eligibility of the voter. The Election Supervisor will either count or reject said vote based on the eligibility list and any other information germane to the question.
5. **Election Results:** After the conclusion of the election, the Election Supervisor will certify the result to the employer and the employee organization. There will be no other election on the question of agency shop for this unit for at least one (1) year from the date of this election.

6. **Confidentiality:** The ballots, ballot envelopes, and other election materials are confidential and will not be released by the SMCS after the election.

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Updated: April 2005

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# Stationary Engineers, Local 39

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

JERRY KALMAR  
BUSINESS MANAGER-SECRETARY



January 31, 2008

## FOR IMMEDIATE RELEASE

Contact: Joan Bryant, Director of Public Employees  
Telephone: (916) 928-0399  
Cell: (916) 813-3250  
E-mail: [jbryant@iuoe-local39.org](mailto:jbryant@iuoe-local39.org)

Contact: Gary Winegar, Business Representative  
Telephone: (530) 823-7736  
E-mail: [gwinegar@iuoe-local39.org](mailto:gwinegar@iuoe-local39.org)

**Sacramento, California**—Stationary Engineers, Local 39, questions the use of public funds to investigate whether the fair share election for the Nevada County employees is appropriate given that the State agency responsible for overseeing such elections determined that the election proceeded in accordance with California law.

The Nevada County Grand Jury was convened to allegedly investigate the manner in which employees were given notice of a secret ballot election to determine whether they wished to be covered by an Agency Shop Agreement that would require all employees to either join the International Union of Operating Engineers, Stationary Engineers, Local 39, or pay an agency fee for representation. The election, including the notice of election, was handled by a third-party, the California Department of Industrial Relations Mediation and Conciliation Service.

Local 39 maintains that the use of a Grand Jury to investigate the Agency Shop election is a waste of public resources for two reasons. First, the issues investigated by the Grand Jury have previously been submitted to the California Department of Industrial Relations, which concluded that the election was properly conducted.

Second, matters concerning Agency Shop elections are under the exclusive jurisdiction of the California Public Employment Relations Board (PERB), and public funds should not be wasted on grand jury investigations on matters that fall under the exclusive jurisdiction of another public agency. Specifically, because the Agency Shop rules are outlined under the Meyers-Milias-Brown Act (MMBA), which is found in California Government Code, PERB is the public agency with jurisdiction to investigate and determine whether there has been any violation of the Agency Shop regulations.

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
CONCILIATION SERVICE

**AFFIDAVIT OF POSTING**

**EMPLOYER: County of Nevada**

**EMPLOYEE**

**ORGANIZATION: IUOE, Stationary Engineers, Local 39**

The undersigned hereby states that Notices of Election in the above-entitled matter were posted personally by him/her in the following places on or before the 9<sup>th</sup> day of August, 2007.

See attached list.

(SIGNATURE)

TITLE BUSINESS REP., LOCAL 39

Date 8/15/07



# COUNTY OF NEVADA

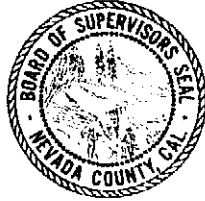
STATE OF CALIFORNIA

950 Maidu Avenue • Nevada City • California 95959-8617

## BOARD OF SUPERVISORS

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Web: [www.mynevadacounty.com/clerkofboard](http://www.mynevadacounty.com/clerkofboard)

July 8, 2008

The Honorable Judge Robert Tamietti  
Presiding Judge of the Nevada County Grand Jury  
Nevada County Courthouse  
201 Church Street  
Nevada City, CA 95959

Re: Board of Supervisors' Responses to the 2007-2008 Nevada County Civil Grand Jury  
Report, *Agency Shop Election II*.

Dear Judge Tamietti:

The attached responses by the Board of Supervisors to the 2007-2008 Nevada County Civil Grand Jury Report, dated June 2, 2008 entitled *Agency Shop Election II*, are submitted as required by California Penal Code Section 933.

These responses to the Grand Jury's Findings and Recommendations were approved by the Board of Supervisors at their regular meeting on July 8, 2008. Responses to Findings and Recommendations are based on either personal knowledge, examination of official County records, information received from the Human Resources Director, the County Executive Officer, or the Board of Supervisors and County staff members.

The Board of Supervisors would like to thank the members of the 2007-2008 Grand Jury for their participation and effort in preparing their Reports, and their participation in the Grand Jury process.

Respectfully submitted,

Ted S. Owens  
Chairman, Board of Supervisors

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO  
2007-2008 CIVIL GRAND JURY REPORT  
DATED JUNE 2, 2008**

**AGENCY SHOP ELECTION II**

*Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by the Human Resources Director and County Executive Officer, or testimony from the Board of Supervisors and county staff members.*

**A. RESPONSES TO FINDINGS**

**1. The County was the party charged under the Mediation and Conciliation Service's Procedures with the giving of notice for the August 15, 2007 Agency Shop Elections.**

Partially disagree.

While the memo of agreement is not explicit in identifying who has posting responsibilities, the County understood that it was a party to the Agency Shop election process and it shared the responsibility for the posting of notices with the Union as outlined in the Memorandum of Agreement (see Attachment #1).

**2. In order to give five calendar days notice for an Agency Shop Election to be held on Wednesday, August 15, 2007, the notice would have had to be posted on or before Thursday, August 9, 2007, and in order to give five working days notice, excluding Saturday and Sunday, the notice would have had to be posted on or before Wednesday, August 8, 2007.**

Disagree.

The "Memorandum of Agreement For Agency Shop Election" (Election MOA) that both the County and Local 39 agreed to and signed required five (5) workdays notice prior to the election. The "Memorandum of Agreement For Agency Shop Election" is an agreement prepared by the State Mediation Service Election Supervisor establishing the rules for the election. The representative from Local 39 signed an affidavit indicating that he posted the required election notice on August 9, 2007, five workdays in advance of the election on August 15, 2007. The Human Resources Director posted notices one day later on August 10, 2007 based on written direction from the State Mediation Election Supervisor. In accordance with the Election MOA, the five-day notice requirement was met because the Union posted within the five days. The State Mediation Election Supervisor clarified for the Board of Supervisors that under National Labor Relations Board (NLRB) procedures, the date of the election is counted towards the five days notice. He indicated that the State Mediation Service utilizes the NLRB rules to conduct State elections.

**3. The County's posting of notice on Friday, August 10, 2007 failed to give the required five working days notice of the Agency Shop Elections. The County gave only three working days notice.**

Partially disagree.

The County did not provide five working days notice but provided for five calendar days notice. As mentioned in response #2, the County complied with the State Mediation Services rules for conducting the election. This includes recognizing the Mediation Service's methods for calculating the appropriate days of notice for posting.

**4. The Union's posting of notice on August 9, 2007 failed to give five working days notice of the Agency Shop Elections. The Union gave only four working days notice.**

Disagree.

The "Memorandum of Agreement For Agency Shop Election" (Election MOA) that both the County and Local 39 agreed to and signed required five (5) workdays notice prior to the election. The representative from Local 39 signed an affidavit indicating that he posted the required election notice on August 9, 2007, five workdays in advance of the election on August 15, 2007. In accordance with the Election MOA, the five-day notice requirement was met because the Union posted within the five days.

**5. The Union's Affidavit, as provided by the Mediation and Conciliation Service, does not reflect the locations where the Union posted notices of the August 15, 2007 elections.**

Agree.

## **B. RESPONSES TO RECOMMENDATIONS**

**1. The BOS should send the Jury's Reports to the Mediation and Conciliation Service for its consideration.**

The recommendation will be implemented by July 31, 2008.

It should be noted that the State Mediation Service has already been informed of the Grand Jury's first report. The County was provided a copy of a letter from the State Mediation and Conciliation Service dated February 22, 2008, to a County employee thanking the employee for bringing the Grand Jury report to their attention (see Attachment 2). The employee's name and address have been redacted for confidentiality reasons.

Since the State Mediation Service is the agency legally responsible for conducting such elections, the Board of Supervisors believes that it is in the best interest of the County, and the processes governing the relationship between the County and the Union, for the State Mediation Service and PERB files to contain an accurate and complete record. Therefore, the County will forward the report to the State Mediation Service and PERB without comment.

**2. In future Union elections, the County should avail itself of the alternative provided in the Mediation and Conciliation Service's "Procedures for Mandated Agency Shop Elections" and distribute the notice to all bargaining unit members, in addition to the traditional posting of notices.**

The recommendation will not be implemented.

The Board of Supervisors cannot unilaterally establish the manner in which notices in a Union election are distributed, as it constitutes interference in Union matters and could create legal liability for the County as an unfair labor practice. However, should future agency shop elections be held, the County is able to raise the election notice issue to the State Mediation Service and request a process where individual notice is given to each affected employee. It should be noted that the State Mediation Service has jurisdiction over the election process and their decision regarding the County's requests will be final.

**3. The BOS should determine whether Mediation and Conciliation Service procedures include permitting the County to use the County's electronic facilities (e-mail) to give employees notice of agency shop elections.**

The recommendation will not be implemented.

The State Mediation and Conciliation Service is responsible for overseeing Agency Shop Elections. This includes the manner in which the notices of the election are distributed. The Mediation Service meets with the parties involved and comes to agreement regarding the type of election and the method for noticing employees prior to the election. Should there be disagreement regarding the process for the election, the State Mediation Service makes the final decision regarding any disputed issues. The County intends to comply fully with the law and established process and has agreed in the previous response dated March 25, 2008 to the Grand Jury that the County will raise the issue surrounding appropriate notice (see below).

As such, the Board of Supervisors cannot unilaterally establish a policy regarding notices in a Union election as such actions may interfere in Union matters and could be an unlawful unfair labor practice. However, should future agency shop elections be held, the County is able to raise the election notice issue and request a process where individual notice is given. It should be noted that the State Mediation Service has jurisdiction over the election process and their decision regarding the County's requests will be final.

State of California  
Department of Industrial Relations  
Mediation and Conciliation Service

**MEMORANDUM OF AGREEMENT FOR AGENCY SHOP ELECTION**

The County of Nevada, hereinafter called the "Employer", and the IUOE, Stationary Engineers, Local 39, hereinafter called the "Employee Organization", hereby agree as follows:

**1. AGENCY SHOP ELECTION:** An election by secret ballot shall be conducted among the employees in Unit defined below to determine whether or not the employees in that unit wish to have an Agency Shop provision implemented. The election shall be conducted under the supervision of an impartial **Election Supervisor** from the **California State Mediation and Conciliation Service (Service)**, jointly requested by the Employer and the Employee Organization to serve as such.

**2. TIME AND PLACE OF ELECTION**

**DATE:** August 15, 2007

**TIME:** 8 – 11AM & 3:30 – 5PM

**LOCATION:** Rood Center

**TIME:** 1 – 2PM

**LOCATION:** Truckee Office

**3. THE UNIT:** Professional BU 7/17

**EXCLUDED:** All Others

**4. ELIGIBLE VOTERS:** All employees in the classification(s) within the Unit described above who were employed during the payroll period ending July 1, 2007, and who are named on an **Eligibility List** agreed to by the parties, a copy of which is incorporated herein as an **Addendum**. There may be no additions to or deletions from this addendum without the signed authorization of each of the parties to this agreement or their authorized representatives. The only list of those people voting will be maintained under the direction of the Election Supervisor.

**5. THE BALLOT:** The secret ballot shall include the question:  
"Do you wish to be covered by an agency shop arrangement that requires all employees to either join IUOE, Local 39 or pay an agency fee for representation?"

The ballot shall contain two squares, one labeled "YES" and the other "NO". The employee voting shall mark the square of his/her choice. There shall be no names signed, or otherwise recorded on the ballot.

**6. NOTICE OF ELECTION:** The Election Supervisor shall prepare a suitable Notice of Election for approval of the Employer and the Employee Organization. This Notice of Election shall be posted in a conspicuous place on the premises of the Employer at least five (5) working days prior to the election. An Affidavit of Posting will be required.

**7. OBSERVERS:** Each party hereto may station one authorized observer or representative at each voting place during the election. Under the direction of the Election Supervisor the Observers may act as checkers and watchers, assist in the identification of voters, challenge voters and ballots, and otherwise assist the Election Supervisor. The names of observers shall be provided to the Election Supervisor by the parties. Failure to appoint an observer or failure of an observer to appear shall be deemed a waiver of the right to station such observer.

**8. CHALLENGED VOTES:** Any of the Observers or the Election Supervisor may challenge the eligibility of a voter. It shall be the duty of the Election Supervisor to mark the envelope containing the challenged ballot of the voter and subsequently to determine the eligibility of the voter and either count or reject said vote based on the eligibility list as provided for herein. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on both parties.

**9. DUTIES OF ELECTION SUPERVISOR:** The Election Supervisor shall hand the ballot to each eligible voter appearing at the voting place. The voter will mark the ballot in secret and fold it. The voter will then personally deposit the ballot in the ballot box under the supervision of the Election Supervisor. After closing the polls, the Election Supervisor, in the presence of the Observer of the Employer and the Observer of the Employee Organization shall count the votes cast. This count shall be reduced to written form and witnessed in writing by the authorized Observers, if any, of the Employer and the Employee Organization signifying that they have witnessed the counting of the ballots.

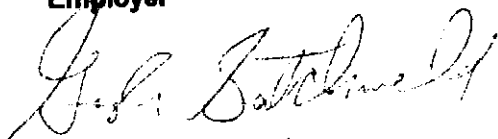
**10. SECRET BALLOT:** The election will be by secret ballot and it is mutually understood that the voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the voting places. At the conclusion of the election, a Certification on Conduct of Election signed by the authorized Observers, if any, and by the Election Supervisor will be issued to both parties.

**11. BINDING RESULTS:** A majority of the valid ballots cast will determine the results of the election. The results of the election shall be accepted as binding on both parties. The parties further agree that there will not be another election on the same question for this unit for at least one year from the date of this election.

**12. NON-STATUTORY PROCEEDINGS:** This agreement for an election to determine employee preference in the matter of an Agency Shop is voluntarily entered into by the parties in full understanding that this election shall not be regarded as a substitute for any legal obligation which may rest on either party.

**13. CONFIDENTIALITY:** The parties agree that the ballots, ballot envelopes and other election materials are confidential and will not be released by the Service after the election.

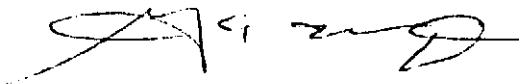
For the  
Employer



Date:

8/15/07

For the  
Employee Organization



Date:

8/15/07

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS  
State Mediation and Conciliation Service  
1515 Clay St., Suite 2206  
Oakland, CA 94612  
Tel: (510) 873-6465 Fax: (510) 873-6475



February 22, 2008

Dear ...

I am responding to your February 15 letter to Curtis Lyon, who no longer works for the State Mediation and Conciliation Service (SMCS).

Thank you for bringing to our attention the Grand Jury report.

In terms of your request, SMCS has no authority to invalidate the election of August 15, 2007. Nor do we have the authority to call a new election. In order for SMCS to supervise a new election, it would have to be at the joint request of the parties - Nevada County and IUOE Local 39. We only conduct elections with the consent of the parties involved.

If you believe that your rights have been violated by your employer and/or your exclusive bargaining representative, you may have recourse through the Public Employment Relations Board. However, I would suggest you get legal advice prior to proceeding.

Sincerely,

A handwritten signature in cursive script that reads 'Paul D. Roose'.

Paul D. Roose  
Supervisor

cc: Bob Losik