



July 16, 2013

Charlene Haught Johnson
Chair, Water Emergency Transportation Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA 94111

Re: WETA Board Meeting – Closed Session

Dear Chair Johnson:

I am writing on behalf of the Western Electrical Contractors Association (WECA), Air Conditioning Trade Association (ACTA) and Plumbing-Heating-Cooling Contractors Association of California (CA PHCC).

We note the Board agenda for July 18 includes a closed session (item 10) "Conference with Labor Negotiators." The agenda lists the Napa-Solano Building and Construction Trades Council as the employee organization – apparently to satisfy the requirement in the Brown Act for closed session meetings of a Public Agency.

While the agenda does not specify the nature of the discussions, we suspect they are related to the PLA WETA is seeking for its capital improvement programs.

I am not aware that the Brown Act permits a public body to engage in closed sessions meetings with labor organizations over a PLA. The Brown Act requires that the meetings of public bodies be conducted in the open, and that notice be given before such meetings are held. The fact that the public body may not take a vote and render a decision does not exempt the meeting from Brown Act requirements.

As I am sure you have been advised, there is an exception to the Brown Act for labor negotiations, but this is to enable a public body to meet with its negotiator regarding discussions or negotiations with employee organizations and unrepresented employees over salaries and fringe benefits.

Gov. Code § 54957.6(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

This "labor negotiations" exception is for the public body's negotiations with its **own employees' representative organizations**, not organizations such as the Building and Construction Trades Council regarding PLAs **or any other matter**.

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The employees on the proposed construction project are **not** the employees of WETA and you may not designate the Building and Construction Trades Council as an "employee organization" in regard to the PLA to hold discussions about the PLA or other matters in private.

In your meeting, subject to the Brown Act, the fact that it includes the Building and Construction Trades Council means that it must be open to the public as well. There is no such thing as a "partially" or "semi-closed" meeting. Either it is a closed session meeting or it is not. A closed session may only involve the public body and any necessary support staff such as your attorney, controller, supervisors, witnesses, etc. Unless they are a member of the public body or an employee of the public body, they either must be excluded from the closed session or it must be opened up to everyone and the meeting conducted in the light of day.

We strongly encourage you and your staff to reissue the agenda and move the discussion with the Building and Construction Trades Council to public view.

Sincerely

A handwritten signature in black ink that reads "Richard Markuson". The signature is written in a cursive style with a large initial "R" and "M".

Richard Markuson

cc: Board Members
Board staff
Stanley S. Taylor, Nossaman LLP