Filed 10/30/18 Los Angeles Police Protective League v. City of Los Angeles CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LOS ANGELES POLICE PROTECTIVE LEAGUE et al., Plaintiffs and Respondents, v. CITY OF LOS ANGELES, Defendant and Appellant.	B280319, B281868 (Los Angeles County Super. Ct. No. BC489113)

Appeals from a judgment and an order of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Reversed and remanded.

Renne Sloan Holtzman Sakai LLP, Arthur A. Hartinger, Linda M. Ross, and Jennifer L. Nock for Defendant and Appellant.

Rains Lucia Stern St. Phalle & Silver, PC, Jacob A. Kalinski, and Brian P. Ross for Plaintiffs and Respondents.

The City of Los Angeles appeals from the declaratory judgment entered in favor of plaintiffs Los Angeles Police Protective League and United Firefighters of Los Angeles City after the trial court found that the City had agreed to guaranteed annual increases in the health insurance subsidies of the two groups' retired members. The trial court determined that the extrinsic evidence offered by both parties was consistent with only the plaintiffs' interpretation of the parties' letter of agreement, which was reflected in the "plain meaning" of that agreement. We reverse and remand for a new trial because, contrary to the trial court's findings, the agreement was ambiguous and the extrinsic evidence was in conflict. As a result, the trial court did not properly evaluate the extrinsic evidence when interpreting the agreement.

The City separately appeals from the order awarding attorney fees to the plaintiffs, an appeal that we ordered could be heard and decided concurrently with the appeal on the merits. Because we reverse and remand for a new trial on the merits, we necessarily reverse the attorney fee order as well.

INTRODUCTION

This action concerns whether the City of Los Angeles agreed to provide guaranteed annual increases in the monthly subsidy for health insurance benefits provided to retired City police officers and firefighters pursuant to their City pension plans. The agreement arose out of the City's decision in 2011 to freeze those subsidy increases, prompting the police and firefighter unions (respectively, the Los Angeles Police Protective League and the United Firefighters of Los Angeles City) to claim

they had a vested right to those increases.[1] The parties resolved their differences by way of a letter of agreement (LOA) that was later enacted as an ordinance by the City Council.

This dispute arose when the Board of Fire and Police Pension Commissioners of the Los Angeles Fire and Police Pensions (the Board), which oversees the pension plans, subsequently decided to increase the monthly subsidies in a smaller amount than it had in the past. The City contended that the LOA allowed the Unions' members to opt out of the freeze in exchange for two percent of their salaries, leaving them subject to the existing procedure that gave the Board discretion over whether to approve any annual subsidy increase pursuant to a formula that capped out at seven percent. The Unions contended that in exchange for their members' agreement to give up two percent of their paychecks, the City agreed to relinquish its discretionary rights and instead guaranteed that it would grant an annual subsidy increase each year in the maximum amount allowed by the existing formula.

The Unions then sued the City for declaratory relief that their interpretation of the LOA was correct, and alternatively for rescission or reformation of the LOA. A bench trial was held where both parties introduced extrinsic evidence in support of their respective interpretations of the LOA. The trial court found that the plain meaning of the LOA was in accord with the Unions' interpretation, and that the extrinsic evidence offered by both parties was consistent with only that interpretation.

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[1] We will refer to the Los Angeles Police Protective League as the police union and to the United Firefighters of Los Angeles City as the fire union. We will sometimes refer to these two entities collectively as the Unions.

FACTS AND PROCEDURAL HISTORY

1. *History of The City's Health Subsidy Program*

In 1974, Los Angeles voters approved an amendment to the City Charter that allowed the City to provide by ordinance a program that would subsidize health insurance coverage for retired police officers and firefighters. (L.A. City Charter, art. XVIII (Charter).) Such a program was enacted by ordinance in 1975 (Ordinance No. 147,014). In 2005 the voters amended the charter again to remove certain caps on the health subsidy amount, allowing the City Council to establish by ordinance the maximum subsidy payments, as well as set standards and limitations for raising or lowering the amount of those payments. (Charter, art. XI, §§ 1330(c) & (e), 1428(c) & (e), 1518(c) & (e), 1618(c) & (e).)

Between 2005 and 2006, the City Council passed ordinances that: (1) set the maximum monthly subsidy toward retiree health insurance premiums at $735.38 effective July 1, 2005; and (2) authorized the Board "to make discretionary changes, on an annual basis, beginning in 2006, to the maximum monthly subsidy, so long as no increase exceeds the lesser of a 7% increase or the actuarial assumed rate for medical inflation for pre-65 health benefits established by the Board for the applicable fiscal year." (Ord. Nos. 176731, 177630; L.A. Admin. Code (City Code), § 4.1154(e).) Changes that exceeded the cap were required to be submitted to the City Council for its review and approval. (City Code, § 4.1154(e).)

Pursuant to the subsidy program, the Board would receive an actuarial report each year concerning the medical inflation rate. If that rate were below seven percent, then the inflation rate determined the maximum allowable subsidy increase. If the

inflation rate were above seven percent, however, then the maximum monthly subsidy increase was seven percent. Between 2005 and 2011, the Board exercised its discretion to approve subsidy increases in the maximum amount of seven percent, bringing it to a monthly total of $1,097.41 effective July 1, 2011. (*Fry v. City of Los Angeles* (2016) 245 Cal.App.4th 539, 545–546 (*Fry*).)[2]

In the wake of the 2008 recession, the City determined in 2011 that, due to rising healthcare costs, it was facing a budget shortfall of $869 million for the 2011-2012 fiscal year, which would balloon to $1.2 billion in three years. Its bond rating had already been downgraded twice, due in part to the unexpected hike in healthcare costs. Looking for ways to cut costs, the City enacted an ordinance freezing the maximum health insurance subsidy at the rate in effect as of July 1, 2011. (City Code, § 4.1166(a).) The freeze applied to employees who retired on or after July 15, 2011 "who opt not to make a contribution for vesting increases in the Maximum Medical Subsidy as allowed by an applicable written agreement between the City and the employee's union." (City Code, § 4.1166(b)(3).)

2. *The LOA And Concomitant Opt-In Ordinance*

In June 2011, the City and the police union began negotiating the terms of an agreement that would allow police union members to opt out of the subsidy freeze. The police union's lead negotiator was its president, Paul Weber. Weber

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[2] *Fry* held that the City's pension subsidy increase provisions did not create a vested right in such increases, but did not consider the issue before us: whether and to what extent the subsequent LOA created such a right. (*Fry, supra,* 245 Cal.App.4th at pp. 547, fn. 5, and 550–551.

was assisted by two other members of the police union's board—Scott Rate and Julian Melendez—as well as the police union's general counsel, Hank Hernandez. Negotiating for the City were City Administrative Officer Miguel Santana and Maritta Aspen, who was chief of the Employee Relations Division within the City's Administrative Office.

After negotiations that were conducted by way of e-mail and face-to-face discussions, the parties executed the LOA, which began with recitals stating that: the parties recognized there would be continuing increases in health care costs; they disputed whether retiree health benefit increases provided for in the City Code were a vested benefit; the City had recently frozen those increases; and they desired that employees who chose to contribute [two] percent of their base salary would "be exempt from the freeze."

In order to resolve their dispute and provide stable funding for the retiree health benefit, the parties agreed that: "Effective on a date mutually agreed to by the parties, employees represented by the [police union] will have the option to voluntarily contribute a maximum of two percent (2%) of their base salary to [their pension plan] to defray a portion of the City's cost of providing retiree health benefits. The parties agree that employees who opt to make the two percent (2%) maximum contribution from their base salary shall be entitled to receive upon retirement the retiree health benefit in effect as of the effective date of this LOA *and thereafter the maximum amount of each annual increase presently authorized by the* [*City Code*] provided all other conditions of eligibility prescribed in the [City Code] are met. The entitlement to retiree health benefit

increases shall be a vested right for those employees." (Italics added.)[3]

The City then amended City Code section 4.1167 in light of the LOA, providing that those Union members who opted in and chose to contribute an additional two percent of their salaries to defray retiree health care costs "shall have a vested right to receive the retiree health benefits that were provided in this Chapter on July 1, 2011, and to receive the maximum amount of annual increases in subsidies or reimbursements for retiree health benefits in all subsequent years thereafter as authorized in this Chapter on June 30, 2011, provided that all conditions of eligibility prescribed in this Chapter are satisfied. The freeze established in Section 4.1166(a) of this Chapter shall not apply to these members and their survivors." (City Code, § 4.1167.)

3. *The Interpretation Dispute Arises*

In March 2012, the Board's staff reported that the medical inflation rate for the year was nine percent and recommended a five percent increase in the Unions' retiree health care subsidies. The police union objected that the City was obligated to increase the subsidy by the maximum amount, up to seven percent, and, at the Board's request, both sides submitted documents supporting their respective interpretations of the LOA and opt-in ordinance.

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[3] Although the fire union did not take part in these negotiations, it soon after agreed to the terms of the LOA. (*Fry, supra,* 245 Cal.App.4th at p. 546, fn. 4.) The fire union's understanding of the meaning of the LOA is therefore based on what it learned from the police union.

The Board approved a 2012 subsidy increase in the maximum amount of seven percent, but stated that it had discretion to authorize an increase below that amount. The Unions then brought this action.

4. *The Trial Proceedings*

A bench trial was held in September 2016. Both sides offered parol evidence to support their respective interpretations of the LOA through both witness testimony and documentary evidence.[4] The trial court issued a statement of decision, finding that the Unions' interpretation of the LOA was the correct one. It read, in relevant part:

"Plaintiffs [the Unions] contend that the plain meaning of the phrase '**the maximum amount of each annual increase presently authorized by the [City Code]**' is that Affected Employees acquired a vested right to receive the highest amount of annual increases authorized by the [City Code] as of the date of the LOA, i.e., the Maximum Amount Authorized. They claim that the word 'maximum' here means the 'highest amount possible' and that, in the context of this phrase, the word 'maximum' applies to the word 'amount', specifically the amount of annual increases. Plaintiffs emphasize that the LOA does not refer to any discretion on the part of the Board.

"The Court finds that Plaintiffs' interpretation is correct. The Court also finds that the use of the phrase '**the maximum amount of each annual increase presently authorized by the [City Code]**' is inconsistent with an intent to allow the Board discretion regarding future increases to the Subsidy.

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[4] We discuss the parties' parol evidence in detail in section 2 of our DISCUSSION.

"During trial, the City proffered, over Plaintiffs' objections, extrinsic evidence which it argued contradicted Plaintiffs' interpretation of the LOAs and supported its own. The Court received this extrinsic evidence in the form of documents and testimony. The Court also received extrinsic evidence offered by Plaintiffs which they contended was consistent with their interpretation of the LOAs. *None of the extrinsic evidence received by the Court showed an intent of the parties that was contrary to the plain meaning of the LOAs and, therefore, the Court does not find that any of the admitted extrinsic evidence alters the meaning of the LOAs.*" (Italics added.)

DISCUSSION

1. *Rules of Contract Interpretation and Parol Evidence*

The fundamental rules of contract interpretation arise from the premise that the parties' mutual intent governs. (Civ. Code, § 1636; *U.S. Bank National Assn. v. Yashouafar* (2014) 232 Cal.App.4th 639, 646 (*U.S. Bank*).) If possible, mutual intent should be inferred solely from the written provisions of the contract. (Civ. Code, § 1639.) The clear and explicit meaning of the provisions, interpreted in their ordinary and popular sense, controls judicial interpretation. (Civ. Code, §§ 1638, 1644; *U.S. Bank*, at p. 646.) If the language used is clear and explicit, it governs, and we will not create an ambiguity where none exists. (*U.S. Bank*, at p. 646.)

A contract is ambiguous if it is susceptible of more than one reasonable interpretation. An ambiguity may appear on the face of a contract, or extrinsic evidence may show a latent ambiguity.

(*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114.)

When the interpretation of a contract is disputed, the trial court must provisionally receive extrinsic evidence that is relevant to show whether the contract is reasonably susceptible of a particular meaning. A trial court commits reversible error if it refuses to consider such extrinsic evidence simply because the trial court believes that the contract language is clear and unambiguous on its face. While a contract may appear clear on its face, extrinsic evidence may reveal a latent ambiguity that gives rise to more than one possible meaning to which the contract's language is reasonably susceptible. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350–1351 (*Wolf*), citing *Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 39–40 & fn. 8; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1140–1141.)

The interpretation of a contract is a two-step process. The court first provisionally receives, without admitting, all credible evidence concerning the parties' intentions to determine whether the contract is ambiguous because it is reasonably susceptible to a party's interpretation. If so, then the extrinsic evidence is admitted to aid in the second step, which is to interpret the contract. (*Wolf, supra,* 114 Cal.App.4th at p. 1351.)

The trial court's determination whether an ambiguity exists is a question of law that we review de novo. Its resolution of an ambiguity is also a question of law if no parol evidence was admitted, or if the parol evidence is not in conflict. (*Wolf, supra,* 114 Cal.App.4th at p. 1351.) If there is conflicting parol evidence,

the trial court's resolution of that conflict is a question of fact subject to review under the substantial evidence test. (*Ibid.*)[5]

When a contract is susceptible to two interpretations the court should choose the construction that makes the agreement "lawful, operative, definite, reasonable and capable of being carried into effect and avoid an interpretation which will make the instrument extraordinary, harsh, unjust, inequitable or which would result in absurdity. [Citations.]" (*Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.)

2. *The Parties' Extrinsic Evidence*[6]

2.1 The City's Extrinsic Evidence

Santana, the City's administrative officer and chief negotiator, testified that members of the police union's negotiating team articulated to him that "those who choose to pay the two percent . . . would not be subject to the freeze and for them there would be no change." Santana also testified that police union chief negotiator Weber told him during negotiations that "he understood that if you opted to pay the two percent then you—there would be no change to the process that was used at

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[5]In a jury trial it is the jury's responsibility to assess conflicting extrinsic evidence and resolve the disputed issue. The court must then base its interpretation of the contract on those findings. (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912–913.)

[6] We do not set forth all the extrinsic evidence offered by the parties. Instead, we set forth enough to illustrate that the extrinsic evidence was in conflict and supported each party's interpretation of the LOA.

that time." Although Santana did not recall Weber using those exact words, he recalled that Weber agreed to the concept.

According to Santana, he and Weber "had a number of conversations about the concept," which was "very straightforward, if you make a contribution you're not subject to the freeze. And if you fail to make a contribution then you would be subject to the freeze. There would be no other change."

In a June 9, 2011 email from Weber to City negotiator Aspen, Weber set forth what appear to be both questions about, and his understanding of, the proposal being discussed. Weber wrote: "The future increases will remain under the authority of the fire & police pension board *under the present amount* (up to 7% and anything over petition the council to cover increase etc….)/ *procedure*." (Italics added.)

During a videotaped education session held for police union members in July 2011, police union Vice President Corina Lee told members, "[Y]ou will be vested in *any* future increases for [the] retire[e] subsidy. . . [T]he current system in determining th[e] future increases is the Ad Code [the City Code] gives the authority to the [Board] up to 7%. Staff makes a recommendation to the Board . . . and the [Board] usually concurs with staff. [¶] Anything over 7% has to go to the City Council for approval. As of today—in the past there has never been an approval over 7%. . . . You got [a] 7% increase . . . for you[r] retiree health care. Does that make sense? Okay? *So we're keeping that current system in place*." (Italics added.)

In educational information posted on its website and published in its newsletter, the police union informed its members that those who chose to opt-in and make the two percent contribution "will become vested in future retiree health

subsidy increases that are authorized annually by the . . . Board. The . . . Board has the authority to increase the retiree health subsidy up to 7% annually, based on the rate of medical inflation, without City Council approval." None of this material told the union members that their contribution guaranteed them annual subsidy increases in any amount.

The City contends that this evidence is consistent with, and supports, its interpretation of the LOA: that those who opted in were exempt from the freeze, and would continue to receive subsidy increases as approved in the Board's discretion. We agree. Testimony that Weber said there would be no change to the process apart from an exemption from the freeze, a concept echoed in his June 9 email, is consistent with the City's interpretation.

2.2 The Unions' Extrinsic Evidence

Weber testified about a negotiation session with Santana where an agreement in principle was reached concerning the LOA. According to Weber, he told Santana that the agreement called for the two percent contribution "[a]nd basically it would be the increases. They would no longer argue that it was no longer a vested benefit. They would agree if you wanted in it was a vested benefit. And then the last item you would get is medical trend rate, and there was a process for doing that up to the maximum. And it would be guaranteed." As they discussed this, Santana was "nodding his head. There was nothing. He never said, no, I don't agree with that Paul, you're wrong. There was no push back. So we had an agreement."[7]

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[7] Mutual assent to a contract may be manifested by spoken or written words or by conduct. (Rest. 2d of Contracts, § 19.) A deliberate nod of the head may be expressive of assent. (*People v.*

In regard to his June 9, 2011 email to Aspen stating that the eventual LOA would provide subsidy increases in the same amount and by the same procedure, Weber explained that his statement reflected his intent that the subsidy increase amount would be set at the maximum each year pursuant to the existing formula. He would never have agreed to leave discretion in the hands of the Board, of which the majority were "political appointees."[8]

The Unions contend this evidence supports their contention that the LOA provided for guaranteed annual increases in the retiree health subsidy, pegged to the formula supplied by the Code. We agree. Weber's statement to Santana that union members who opted in were guaranteed the medical trend rate, under a process that went to the maximum, aligns with their interpretation of the LOA, and Santana's supposed head nods

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Thomas (1967) 65 Cal.2d 698, 708.) A nod of the head is a conventional symbol signifying assent to a contract. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 850 & fn. 9.)

[8] Much of the Unions' other extrinsic evidence came from the subjective understanding of the LOA held by both those who negotiated the agreement, and those who did not but relied instead on what they were told. For the guidance of the trial court on remand, such evidence may not be considered to interpret the terms of a contract, although it may be relevant to understand the surrounding circumstances and negotiations, as well as to ascertain a party's actual intent at the time the contract was made. (See *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 528; *Adams v. MHC Colony Park Limited Partnership* (2014) 224 Cal.App.4th 601, 620, fn. 18; *Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 351, fn. 9.)

throughout their discussion could signify an objective manifestation of assent.

3. *The LOA Is Ambiguous*

As mentioned earlier, a contract is ambiguous when it is reasonably susceptible to a party's interpretation. If so, extrinsic evidence is then admitted to aid in the second step, which is to interpret the contract in light of that evidence. (*Wolf, supra,* 114 Cal.App.4th at p. 1351.) Although the Unions contend the LOA is unambiguous, we conclude the LOA is reasonably susceptible to each party's interpretation.

Our interpretation of the LOA turns on the operative phrase that defines the vested benefit that "shall" be received by those Union members who opted in to the LOA's freeze exemption buy-out: " . . . the retiree health benefit in effect as of the effective date of this LOA *and thereafter the maximum amount of each annual increase presently authorized by the* [*City Code*] . . . ." (Italics added.)

The Unions assert that our interpretation should be driven by the LOA's use of the word "maximum," contending that the maximum amount of a subsidy increase is readily determinable each year as the lesser of the medical inflation rate or seven percent. In exchange for its members' two percent contribution, the City eliminated the Board's discretionary right to award subsidy increases each year, with the Board's only task being to receive annual actuarial reports on the medical inflation rate that would determine whether the increase would be less than seven percent.

There is logic to the Unions' interpretation. If the City intended to retain its discretion, there would be no reason to

modify the term "annual increase" with the word "maximum." Instead, the City's intent to retain the Board's discretion could have been expressed by eliminating "maximum," making clear that the amount was not fixed. And nowhere does the LOA expressly state that the Board would retain its discretion whether to award subsidy increases in any amount up to the seven percent threshold.

The City contends that our focus should be on the phrase "presently authorized by" the City Code. Regardless of what the medical inflation rate might be in any given year, or whether the maximum subsidy increase permitted in any given year can be routinely determined, the City points out that while the City Code authorizes subsidy increases only in the Board's discretion, the LOA is silent about stripping the Board of that discretion. As the City reads it, the Unions remain subject to the Board's discretion because, as "presently authorized," ie., at the time the LOA was executed, the Board still had discretion whether to award annual subsidy increases in any amount under the seven percent maximum formula.

We also see support for the City's interpretation in the LOA's use of the term "*each* annual increase presently authorized" by the City Code. If the City had in fact guaranteed automatic annual increases in an amount to be ministerially determined, inclusion of "each" strikes us as a curious addition. "Each" suggests something less than an automatic guarantee and something more that calls for individual consideration.[9]

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[9] For instance, the use of "each" would better support the Unions' interpretation if the sentence provided that employees who opted in were entitled to receive "each year the maximum amount of annual increases authorized under the City Code." By

In short, the LOA is reasonably susceptible of each party's interpretation, and each party produced extrinsic evidence to support its interpretation. As a result, the LOA provision in dispute here is ambiguous, and the trial court erred by determining otherwise.[10]

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the same token, the City's interpretation would be stronger if the provision eliminated the term "maximum" and instead provided for subsidy increases "in the amount authorized" by the City code.

Of course, both of our suggested versions still fall short of stating precisely what each party contends the LOA means. For the City, it would have read that employees who opted in "would be exempt from the freeze and are still entitled to annual subsidy increases as authorized in the Board's discretion." For the Unions, it would have read that employees who opted in "would be exempt from the freeze and shall be entitled to receive each year a subsidy increase in the maximum amount allowed by the Board's current formula."

[10] The City contends that because the LOA is ambiguous, we must apply the rule announced in *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171 (*REAOC*) that the existence and scope of a vested right must be clearly shown, thus requiring a judgment in its favor. We disagree. The *REAOC* court was responding to a request from the United States Ninth Circuit Court of Appeals to render an advisory opinion on the abstract question whether a county and its employees could form an *implied* contract that conferred vested rights to health benefits on retired county employees. (*Id.* at p. 1176.) The same is true of *Vallejo Police Officers Assn. v. City of Vallejo* (2017) 15 Cal.App.5th 601, which applied *REAOC* in the context of a claim by city police officers that they obtained a vested right to certain benefits based on the city's conduct. Neither is applicable here, where both the LOA and the City's implementing ordinance expressly state that the City was

4. *The Trial Court Did Not Properly Evaluate The Extrinsic Evidence*

As discussed in Section 1, *ante*, it is reversible error for a trial court to refuse to consider extrinsic evidence based on the court's determination that the language of a contract is clear and unambiguous. (*Wolf, supra,* 114 Cal.App.4th at p. 1351.) Instead, the trial court must: first, provisionally receive all credible extrinsic evidence concerning the parties' intentions; second, in light of the extrinsic evidence, decide whether the contract language is reasonably susceptible to the interpretation urged; and third, if so, admit the extrinsic evidence to assist with its interpretation of the contract. (*Ibid*.)

The trial court here appears to have determined that the "plain meaning" of the LOA was consistent with only the Unions' interpretation, and then examined the extrinsic evidence of both parties and determined that it was consistent with only that interpretation. The trial court therefore erred in two respects. As set forth above, the LOA is ambiguous because it is reasonably susceptible to each party's interpretation. Furthermore, the extrinsic evidence is in conflict, with the City's evidence supporting its interpretation of the LOA, not that of the Unions.

By so misconstruing the City's extrinsic evidence, we conclude that the trial court effectively failed to consider that evidence at all. Because this court cannot review and weigh the conflicting extrinsic evidence, the remedy in such a case is to reverse and remand for a new trial, and we shall do so. (*Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co., supra,* 69 Cal.2d at p. 40, 40–41; *Wolf, supra,* 114 Cal.App.4th at p. 359;

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granting the covered employees a vested right, and the dispute centers solely around the scope of that right. (*Id*. at pp. 616–620.)

Rainier Credit Co. v. Western Alliance Corp. (1985) 171 Cal.App.3d 255, 261–262.)

5. *The Order For Attorney Fees Is Reversed*

The trial court awarded the Unions attorney fees of more than $262,000 on the basis that they had successfully litigated a matter of public interest. (Code Civ. Proc., § 1021.5.) Because we reverse the judgment on the merits, we will also reverse the fee award.

DISPOSITION

The judgment (case No. B280319) and the attorney fee order (case No. B281868) are reversed, and the matter is remanded to the superior court with directions to conduct a new trial. Appellant shall recover its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MICON, J.*

We concur:

MANELLA, P. J. WILLHITE, J.

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.