

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER**

Date: 11/07/2008

Time: 04:30:00 PM

Dept: C-70

Judicial Officer Presiding: Judge Jay M. Bloom
Clerk: Lynn Rockwell

Bailiff/Court Attendant:
ERM: Not Reported

Case Init. Date: 08/19/2008

Case No: 37-2008-00089910-CU-WM-CTL Case Title: Trowbridge vs. Southerneastern Economic
Development Corporation

Case Category: Civil - Unlimited

Case Type: Writ of Mandate

Event Type: Motion Hearing (Civil)

Causal Document & Date Filed:

Appearances:

The Court having taken this matter under submission after oral argument at 2:30 pm this date, having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

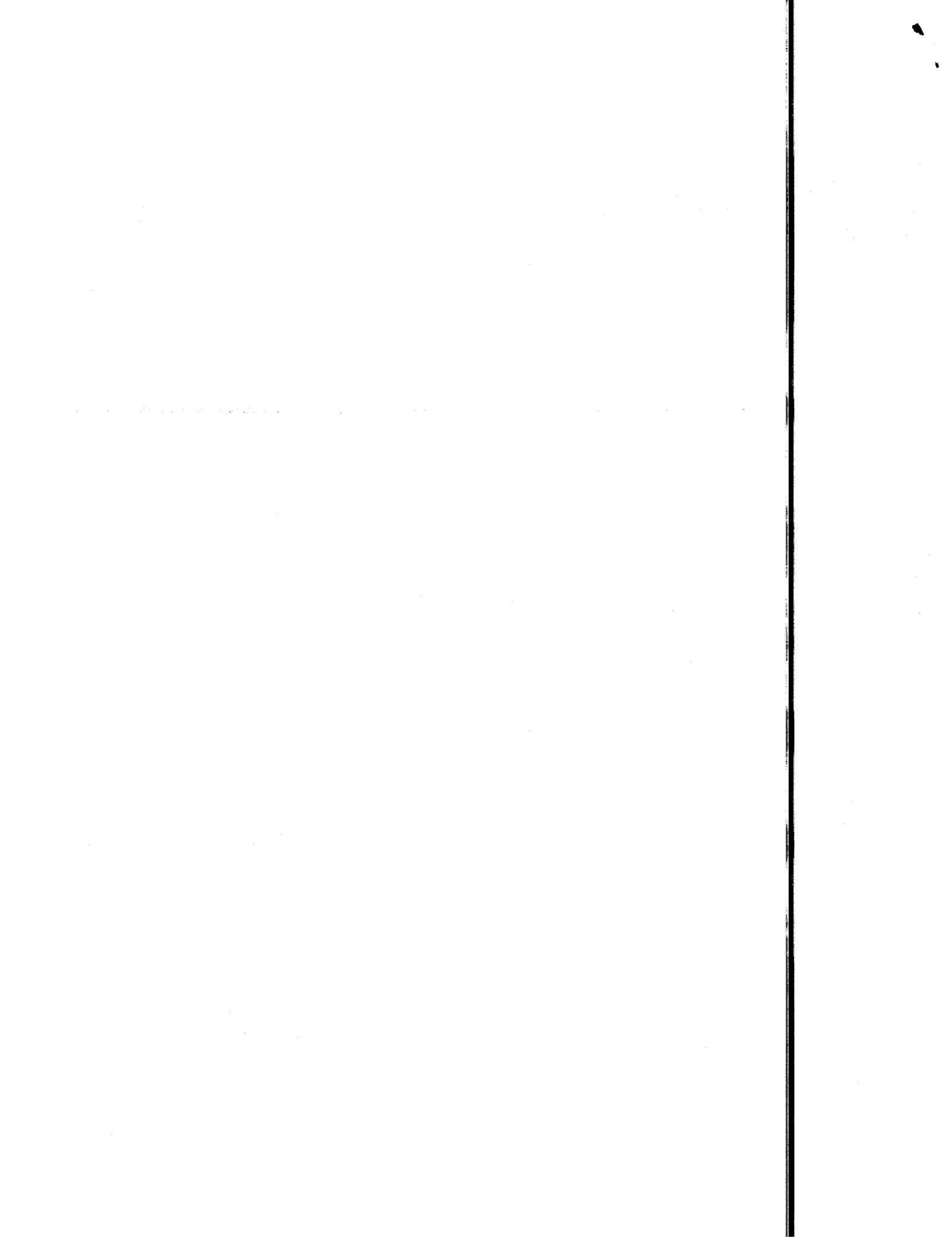
Petitioner Ian Trowbridge's Motion for Preliminary Injunction is granted.

Petitioner's contends the Southeastern Economic Development Corporation ("SEDC") violated the Brown Act by discussing or taking action on a matter of compensation in a closed session. Thus, the issue to be decided by the court is whether the decision to pay severance to Smith was lawfully give in closed session or should have been given in open session. The parties do not dispute the decision to terminate Smith was a personnel matter and properly discussed in a closed session pursuant to Govt. Code §54957(b)(1). Petitioner argues that under subsection (b)(4), the discussion regarding Smith's compensation should have been done in open session. The pertinent language states:

Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

Neither Respondent nor Smith contend the condition of a "reduction of compensation that results from the imposition of discipline" in the above language for a closed session applies. Thus, the only issue is whether there was discussion or action on proposed compensation which should have taken place in an open session.

Respondent states it took "no action" within the definition of the Brown Act with regard to Smith's compensation and therefore, did not violate the Brown Act. However, the statute also states that discussion on proposed compensation is to take place in open session. It is reasonable there was some discussion as to the amount of Smith's severance. Even if it was simple arithmetic based upon the terms of Smith's employment contract and Govt. Code §53260, there must have been some discussion as to the amount. Smith concedes the Board calculated the amount payable to Smith. The number was not magically reached and inserted into the Board's statement. Further, Respondent and Smith have failed to distinguish between "proposed compensation" and severance. The severance is proposed



compensation, regardless of whether it was mandated by Smith's employment contract. Therefore, the evidence supports a finding Respondent discussed proposed compensation in closed session in violation of the Brown Act.

The Brown Act violations alleged by Petitioner are not moot. Under Govt. Code §54960.1, an agency may cure or correct an alleged violation. Respondent asserts the violation was cured at the closed session on September 24, 2008 because the litigation and personnel exceptions were both applicable during the meeting. Thus, Respondent used a closed meeting to remedy a meeting which should have been originally open. It is incongruous to use a litigation exception to close a subsequent remedial meeting when the litigation exception did not apply to the original meeting. Therefore, Petitioner has established a strong likelihood of prevailing on the merits.

Petitioner raises the issue of the amount of the severance and the amount of her annual salary in the briefs. This issue is not before the court as framed by the allegations in the Verified Complaint. The Complaint alleges two causes of action for violation of the Brown Act. There are no allegations with regard to Smith's salary or the amount of salary in the Complaint. Thus, the court does not reach those issues in this ruling.

A balancing of the equities also weighs in favor of Petitioner. There is more harm to the taxpayer for paying an amount to Smith and then attempting to retrieve it than there is to withhold the money pending resolution of the claim. The court finds Petitioner is likely to prevail on the merits and there would be irreparable harm if the injunction is not granted. Therefore, the motion for preliminary injunction is granted and Respondent is ordered not to pay any severance to Smith.

Petitioner is ordered to post a bond in the amount of \$10,000.
All requests for judicial notice are granted.

Respondent's future papers shall comply with CRC Rule 2.113, 3.1110(e) (binding) and 3.1110(f) (exhibit tabs).

Respondent Southeastern Economic Development Corporation's Motion to Dismiss is denied.

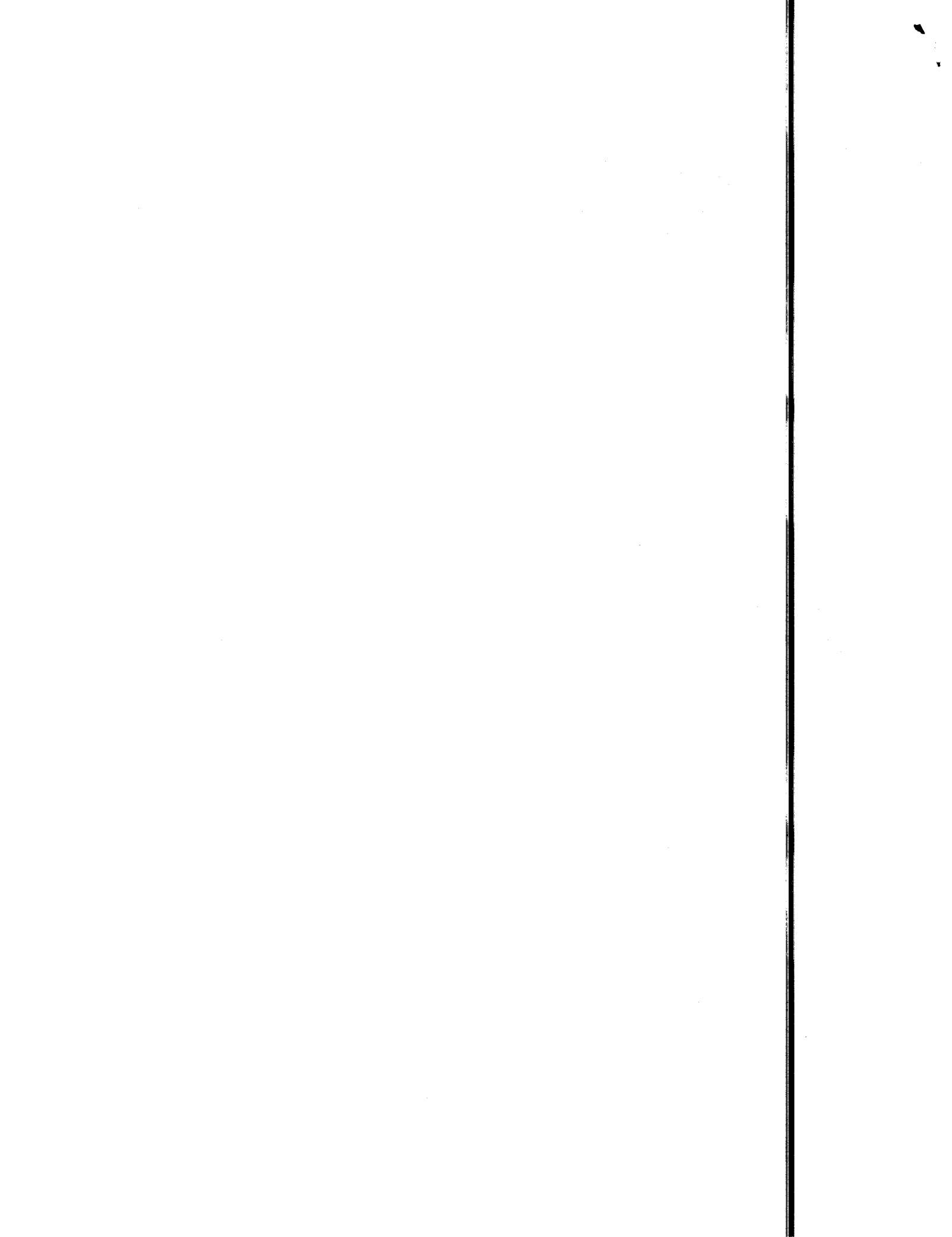
Respondent contends they cured the alleged Brown Act Violation by approving Smith's Termination Agreement in open session. As set forth above, the limited scope of the issue to be addressed by this court is framed by the pleadings. As such, the issue is whether the amount of compensation for Smith should have been discussed in open or closed session only. Since there was no meaningful action regarding compensation in the open session, the acts taken by the Board did not cure the violation. In addition, Respondent failed to give adequate notice as required by the Brown Act.

The purpose of the Brown Act is set forth in Govt. Code §54950 and states:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

In this case, the initial meeting and the attempts at curing the procedural defects do not meet the spirit of the law. Therefore, the motion to dismiss is denied.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Trowbridge vs. Southerneastern Economic Development Corporation

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2008-00089910-CU-WM-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Clerk's Certificate of Service by Mail SD was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/13/2008.

Clerk of the Court, by: *L. Rockwell*
L. Rockwell, Deputy

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