

# Daily Journal

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## TOP 25 MUNICIPAL LAWYERS OF 2011



Robert Levins / Daily Journal

### Nate J. Kowalski

**K**owalski spends much of his time trying to help municipalities cope with budget crises in this gloomy economy.

"The challenge for public agencies is how do you respond to this fiscal crisis, balance the budget at a time of declining tax revenue, and provide the same level of public service they have provided for decades?" he said.

Kowalski is representing the city of San Bernardino, which attempted to negotiate wage concessions with firefighters. After an impasse, the city implemented temporary wage reductions for the firefighters. The union then brought a petition for a writ of mandate, claiming the City Charter prevented the city from taking this action. *San Bernardino Firefighters v. City of San Bernardino*, CIVDS 1102415, (San Bernardino Super. Ct.).

The conflict: The City Charter has a formula that provides for yearly wage adjustments based on a comparison with the wages paid by similar public agencies. However, state law — the Meyers-Milias-Brown

Act — mandates collective bargaining must be predicated on a public agency's current fiscal condition.

On Nov. 7, Judge David S. Cohn initially gave the parties a tentative ruling that the City Charter provisions supersede state law on issues of employee pay, but then took the matter under submission.

"Hopefully, he will change his mind," Kowalski said. "If Judge Cohn is to issue a ruling which upholds the firefighters' position, the possible implications are, you could have a citizens group put an initiative on the ballot which freezes wages indefinitely."

He added, "Public agencies and unions should be skeptical of a framework where the initiative process will effectively displace a lot of what has previously occurred at the bargaining table."

Kowalski also represents the city of Long Beach in a dispute with the machinists union, stemming from a worldwide financial crisis in September 2008. *International Association of Machinists v. City of Long Beach*, LA-CE-537-M, (Public Employment Relations Board).

### MUNICIPAL LAW

Nate J. Kowalski

Atkinson, Andelson, Loya, Ruud & Romo PLC  
Cerritos

**Practice Type:** Litigation

**Specialty:** Labor and employment

**Big Matter:** Represents the city of San Bernardino in a dispute with the firefighters union.

The city successfully negotiated wage and benefit concessions from its employee unions during the 2008-09 fiscal year, but the machinists held out. The city then declared a fiscal emergency and implemented temporary furloughs for the employees in the machinists' bargaining unit. The union then filed an unfair practice charge with the Public Employment Relations Board. A decision is pending.

The case could result in new case law that would guide other public agencies grappling with these same problems, Kowalski said.

"What is novel is, we don't have a lot of clear guidance on what constitutes a fiscal emergency," he added.

Last fall, the state Supreme Court upheld the furloughs imposed by Gov. Arnold Schwarzenegger because they had been ratified by the Legislature. Kowalski is arguing the same doctrine should apply to a charter city.

"The more fundamental question is to what degree California courts and administrative agencies, such as PERB, are going to give deference to local agencies' declarations of fiscal emergencies," he said.

Overall, Kowalski said, "It's been a difficult stretch for us in the public sector, because we are confronting some new issues where we don't have the ability to tell our clients, with a high degree of certainty, whether a challenge will be successful. Some of these issues are starting to be ironed out, but it will take another couple of years for many of them to be resolved. By then, we hope we'll be out of this quagmire we are in now."

— Pat Broderick