Filed 2/24/11 Opinion following rehearing

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COUNTY OF LOS ANGELES, Plaintiff and Appellant, v. LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION, Defendant and Respondent; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721, Real Party in Interest and Respondent.	B217668 (Los Angeles County Super. Ct. No. BS116993)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Reversed and remanded with directions.

Gutierrez, Preciado & House, Calvin House, and Clifton A. Baker; Office of County Counsel, Manuel A. Valenzuela and Lucia Gonzalez Peck, Deputy County Counsel, for Plaintiff and Appellant.

Weinberg, Roger & Rosenfeld, Alan G. Crowley, Jacob J. White, and Ann-Marie Gallegos, for Real Party in Interest and Respondent.

Altshuler Berzon, Scott A. Kronland and Eileen B. Goldsmith for SEIU United Long Term Care Workers, SEIU Local 521, SEIU United Healthcare Workers West and California United Homecare Workers as Amici Curiae on behalf of Real Party in Interest and Respondent.

INTRODUCTION

This case implicates the privacy rights of Los Angeles County employees who are not Union members and their ability to control the dissemination of their personal information to the Service Employees International Union, Local 721 (the Union), which has a statutory duty to represent even these non-member County employees. The County of Los Angeles, Chief Executive Office, appeals from the denial of its petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), in which it asserted the privacy rights of these non-member County employees and challenged the decision by the Los Angeles County Employee Relations Commission (Commission) that ordered the County to release their names, home addresses, and home telephone numbers to the Union.

The trial court concluded the Commission erred by applying the traditional labor law presumption in favor of disclosure. Nevertheless, the trial court upheld the Commission's decision to disclose the non-members' personal information under California privacy law, applying the balancing test set forth in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40 (*Hill*). We do not disturb the trial court's determination that the Union is entitled to the personal information. The trial court, however, ordered disclosure of the non-members' personal information without due consideration to procedural protections afforded to third parties whose privacy rights are at stake. (See *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 371-372 (*Pioneer Electronics*).)

In this case of first impression, we conclude non-member County employees who have not disclosed their personal information to the Union are entitled to notice and an opportunity to object before disclosure. When third-party information has been ordered disclosed in civil litigation, our Supreme Court recognizes that privacy notices and opt-

out procedures sufficiently strike a balance between the right to the information and the rights of third parties to control the dissemination of their personal information. Non-member County employees, like those unwillingly thrust into litigation, are entitled to these same procedural protections. County employees have a reasonable expectation that the personal information they provide to their employer will remain confidential and not disseminated without notice. These employees do not forfeit their privacy rights by accepting employment with a public agency whose employees have a collective right to unionize but an individual right not to join. We therefore reverse and remand to the trial court with directions to enter a new order denying the petition but directing the County to give non-member County employees notice and an opportunity to object before disclosure of their personal information to the Union.

FACTS AND PROCEDURAL BACKGROUND

During collective bargaining, the Union asked the County for the personal information of County employees in the bargaining unit who are not Union members. The County refused. The Union filed an unfair employee-relations practice charge with the Commission in which it contended the County violated sections 12(a)(3) and 15[1] of the County's Employee Relations Ordinance (Ordinance). Following a hearing before an administrative hearing officer, the Commission agreed with the Union.

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[1] Section 12, subdivision (a)(3), codified at section 5.04.240, subdivision (A)(3) of the Los Angeles County Code, states that it is an unfair employee relations practice for the County "[t]o refuse to negotiate with representatives of certified employee organizations on negotiable matters."

Section 15, codified as section 5.04.060, section (A) of the Los Angeles County Code states: "To facilitate negotiations, the county shall provide to certified employee organizations concerned the published data it regularly has available concerning subjects under negotiation, including data gathered concerning salaries and other terms and conditions of employment provided by comparable public and private employers, provided that when such data is gathered on a promise to keep its source confidential, the data may be provided in statistical summaries but the sources shall not be revealed."

A. *Facts*

1. *Union's Limited Communication With Non-Members*

The Union is the certified majority representative for several bargaining units in the County. County employees have the collective right to unionize, but the individual right to refuse to join or participate in a union. (Gov. Code, § 3502; L.A. County Code, § 5.04.070.) As an accommodation of these rights, a public agency may enter into an agency-shop agreement with a major bargaining unit. (Gov. Code, § 3502.5, subd. (a).) " '[A]gency shop' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization." (*Ibid.*)

The Memorandum of Understanding (MOU) between the Union and the County is an agency-shop agreement. County employees who do not want to join the Union have three options: (1) decline to join and pay their fair-share fee; (2) decline to join, object to the fair-share fee and instead pay an agency-shop fee; or (3) decline to join, claim a religious exemption, and pay the agency-shop fee to a non-religious, non-labor charitable fund.

Since the agency-shop agreement permits the Union to collect fees from non-members, the Union must send an annual *Hudson* notice,[2] informing County employees of their membership options, the applicable fees, and the reasons they must pay these fees. In the past, the Union prepared the *Hudson* notice, the County prepared the mailing labels, and the Commission mailed the *Hudson* notices.

[2] As stated in Section 7 of the MOU: "The Union agrees to provide notice and maintain constitutionally acceptable procedures to enable non-member agency shop fee payers to meaningfully challenge the propriety of the use of agency shop fees as provided for in Chicago Teachers Union, Local No. 1, AFT, AFL-CIO et al. v. Hudson, 106 S.Ct. 1066 (1986). Such notice and procedures shall be provided to non-member agency shop fee payers for each year that the agency shop Memorandum of Understanding is in effect."

The *Hudson* notice packet includes a solicitation letter to join the Union and forms to decline to join. Those County employees who affirmatively decline to join the Union must complete and return one of the two forms attached to the *Hudson* notice ("agency shop fee designation" or "statement of religious objections"). These forms request the County employees' name, home address, and home telephone number. County employees who do not respond are by default "fair share fee payers." As of 2007, fair-share-fee payers represented approximately 11,000 of the 14,512 non-member County employees. The Union has home addresses and home telephone numbers for less than half of these non-members.

2. *Collective Bargaining Negotiations Addressing Changes To The Method Of Communicating With Non-Member County Employees*

During negotiations in 2006, the Union proposed a change in Article 15, Section 7 of the MOU, addressing the obligation to provide *Hudson* notices. The proposed change stated: "To facilitate the carrying out of this responsibility, each year the County shall furnish the Union with the names and home addresses of employees in [the] bargaining units covered by agency shop provisions."

The Union wanted the personal information to communicate with the members of the bargaining unit about union activities, layoffs, and other job-related activities. The Union also wanted the information for recruitment. A Union representative testified: "If we had the chance to talk to [the non-members], we could have them as members, as opposed to fee payers or whatever."

The Union made several requests for this personal information during the bargaining process. The County countered, contending the personal information was not relevant to any collective bargaining issue and also asserted the non-members' right to privacy under the California constitution. The County proposed either to continue the current method of mailing *Hudson* notices to non-members or to negotiate an "authorization procedure for employee's to release personal census data . . . ." The

Union rejected these alternatives, withdrew its proposal to modify the *Hudson* notice provision, and filed an unfair employee-relations practice charge.[3]

3. *Union's Unfair Employee-Relations Practice Charge Alleged Right To Personal Information Of Non-Member County Employees*

The Union alleged it needed the personal information of non-member County employees to fulfill its representation duties. The unfair employee-relations practice charge claimed both the National Labor Relations Board (NLRB) and the state's Public Employee Relations Board (PERB) have consistently ruled certified representatives of employees are entitled to the personal information of non-members who are part of the bargaining unit.

B. *Procedural Background*

1. *The Commission Relied On Federal Labor Law And Ordered The County To Disclose The Personal Information Of Non-Member County Employees*

After a three-day hearing, the administrative hearing officer recommended to the Commission that it order the County to disclose to the Union the personal information of non-member County employees. Recognizing this was a case of first impression, the hearing officer relied on NLRB and PERB decisions. Based upon this precedent, the hearing officer concluded non-member County employees' personal information was presumptively relevant to the Union's representation, and the Union had a right to the information.

The hearing officer rejected the County's defense that the disclosure of non-members' personal information would violate their privacy rights. The hearing officer acknowledged privacy interests were at stake, and relied on federal law in which the party asserting the privacy right has the burden to show the need for privacy outweighs the need for the information. Citing *Teamsters Local 517 v. Golden Empire Transit District* (2004) PERB Decision No. 1704-M (*Golden Empire Transit*), the hearing officer concluded the County had not met its burden.

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[3] The unfair employee-relations practice charge was filed by SEIU Local 660. In March of 2007, SEIU Local 721 was designated as the successor.

The hearing officer's findings and recommendation were forwarded to the Commission. After consideration, the Commission adopted the hearing officer's recommendations, denied reconsideration, and thereafter issued an order of affirmation.

2. *The Superior Court Applies California Law But Concludes The Union's Interest Outweighs Non-Members' Right To Privacy*

The County filed a petition for writ of mandamus (Code Civ. Proc., § 1094.5), seeking relief from the Commission's decision on the grounds that disclosure of non-members' personal information violates their right to privacy under California law. The trial court agreed the Commission erred but denied the petition.

The trial court concluded the Commission misapplied the law and should have decided the issue under California privacy law.[4] (See Code Civ. Proc., § 1094.5, subd. (b).) Applying the *Hill* test, the trial court concluded non-member County employees had a right to privacy in their personal information. The County employees who were not Union members met the criteria to establish (a) a legally protected privacy interest in their personal information; (b) a reasonable expectation of privacy that their personal information would not be further disseminated by their employer; and (c) a serious invasion of privacy because the disclosure of the non-members' personal information constituted a "non-trivial" invasion of privacy.

Having concluded the non-members' right to privacy, the trial court considered the Union's competing interest to represent all County employees for purposes of collective bargaining. The labor law cases, according to the trial court, established a public policy in favor of the Union's right to communicate with all represented employees. On balance, the trial court concluded the public policy interests favoring collective bargaining outweighed any privacy interest non-member County employees might have in nondisclosure. Thus, disclosure of the personal information of non-member County employees did not violate California law.

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[4] Although the trial court concluded the County waived the issue by failing to raise it during the administrative hearing, it decided the petition on the merits.

The County timely appealed from the judgment entered following the denial of the petition.

DISCUSSION

1. *Standard Of Review*

We must determine whether a County employee who is not a Union member has a reasonable expectation under California privacy laws that he or she will be provided notice and an opportunity to object before the County discloses his or her personal information to the Union. This is a legal question when, as here, the facts are undisputed. (*Pioneer Electronics, supra*, 40 Cal.4th at pp. 370-371.) On legal issues, the trial court was required to exercise its independent judgment, while examining the administrative record for any errors of law committed by the Commission. (See *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 810-811; *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921-922.) On appeal, we are not bound by any legal interpretation of the trial court. Instead, we make an independent review of any questions of law necessary to the resolution of this matter on appeal. (*Union of American Physicians & Dentists v. Los Angeles County Employee Relations Com.* (2005) 131 Cal.App.4th 386, 397.)

2. *Non-Members' State Constitutional Right To Privacy*

As the exclusive representative of County employees, the Union represents all employees in the bargaining unit. The Union and County have a duty to negotiate in "good faith" for the purpose of arriving at a collective bargaining agreement (Gov. Code, § 3505; L.A. County Code, § 5.04.240(A)(3).) To fulfill its good faith bargaining obligation, an agency such as the County must provide the Union published data it regularly has available concerning subjects of negotiation, including salary data and other terms and conditions of employment provided by comparable public and private employers. (L.A. County Code, § 5.04.060(A).) Under federal and state labor law, home addresses of bargaining unit employees constitute information that is necessary to the collective bargaining process. (See *United States Department of Defense v. Federal Labor Relations Authority* (1994) 510 U.S. 487, 493; *Golden Empire, supra*, PERB Dec.

No. 1704-M, at p. 8.) The disclosure question presented here, however, is governed by our state's constitutional right to privacy.

The California Constitution states: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Cal. Const., art. I, § 1.) The phrase "and privacy" was added to the California Constitution by voter initiative (the Privacy Initiative). (*Hill*, *supra*, 7 Cal.4th at p. 15.) "This provision creates a zone of privacy which protects against unwarranted compelled disclosure of certain private information. [Citations.]" (*Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 357.)

"The text of the Privacy Initiative does not define 'privacy.' The Ballot Argument in favor includes broad references to a 'right to be left alone,' calling it a 'fundamental and compelling interest,' and . . . include[s] . . . 'our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose.' [Citation.]" (*Hill*, *supra*, 7 Cal.4th at pp. 20-21.) As discussed in *White v. Davis* (1975) 13 Cal.3d 757, the argument in favor of the amendment stated: " '*Fundamental to our privacy is the ability to control circulation of personal information*. [Italics in original.] This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.' " (*Id*. at p. 774.) One of the points that emerged from the arguments in favor of the Privacy Initiative was the "improper use of information properly obtained for a specific purpose, for example, the use of it for another purpose or the disclosure of it to some third party . . . ." (*Id*. at p. 775.) This right to informational privacy that is reflected in our state Constitution also is reflected in our state laws, which regulate the dissemination of personal information. (See, e.g., Civ. Code, § 1798 et seq. [the Information Practices Act of 1977].)

3. *The Reasonable Expectation Of Privacy Under The Hill Test*

As noted, the right to privacy is not absolute – the right to privacy protects the individual's reasonable expectation against a serious invasion. "[W]hether a legally recognized privacy interest exists is a question of law, and whether the circumstances give rise to a reasonable expectation of privacy and a serious invasion thereof are mixed questions of law and fact. [Citation.] 'If the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law.' [Citation.]" (*Pioneer Electronics, supra*, 40 Cal.4th at p. 370.)

The trial court, in applying the *Hill* test, concluded County employees who are not Union members had a reasonable expectation of privacy that their personal information would remain confidential. "A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. [Citation.]" (*Hill, supra*, 7 Cal.4th at p. 37.)

There is a legally protected privacy interest in one's home, and the home "is accorded special consideration in our [federal] Constitution, laws, and traditions. [Citations.]" (*United States Department of Defense v. Federal Labor Relations Authority, supra*, 510 U.S. at p. 501.) The residential privacy interest includes the right not be disturbed in one's home by unwanted advertising and solicitation by mail. (*Rowan v. Post Office Dept.* (1970) 397 U.S. 728, 737.) As the United States Supreme Court stated: "The ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality . . . ." (*Ibid.*) To avoid this unwanted intrusion, household members may give notice not to be disturbed at home. (*Ibid.*) The privacy interest at stake is not the intrusion resulting from the receipt of bothersome "junk mail," but the right to be "left alone," in one's home. (See *United States Department of Defense v. Federal Labor Relations Authority, supra*, at p. 501.) The disclosure of names, addresses, and telephone numbers of association members implicates the privacy interest in the sanctity of the home. (*Planned Parenthood Golden Gate v. Superior Court, supra*, 83 Cal.App.4th at pp. 359-360.)

Employees who provide their home address and home telephone number as a condition of employment have a reasonable expectation that the personal information given to their employer will remain confidential and not disseminated except as required to governmental agencies or benefit providers. (See *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554, 561.) A public employee does not have a diminished expectation of privacy in his or her personal information. (See *Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 950-951.) Nor have County employees implicitly consented to the release of their personal information to the Union by accepting employment with the County.

4. *Procedural Safeguard Of Privacy Notice To Third Parties And An Opportunity To Object Before Disclosure Of Personal Information*

When disclosure of third-party information is compelled, as the trial court held in this case, our Supreme Court in *Pioneer Electronics, supra*, 40 Cal.4th at page 373 recognized certain procedural safeguards of advance notice to those persons whose privacy interests are at stake to limit an intrusion of privacy that would otherwise be regarded as serious. These procedural safeguards are intended to minimize the intrusion of a recognized privacy interest. (*Hill, supra*, 7 Cal.4th at p. 38.)

The *Pioneer Electronics* court focused on the requisite notice and opportunity to object that should accompany a precertification communication to members of a putative consumer class before disclosure of personal information. The class representative sought discovery of third-party customer information from the company. (*Pioneer Electronics, supra*, 40 Cal.4th at p. 364.) They requested the names and contact information of those customers who wrote to Pioneer Electronics to complain about the product at issue in the lawsuit. (*Ibid*.) Pioneer Electronics refused to disclose the customer information, asserting their customers' right to privacy. (*Ibid*.) The trial court ordered disclosure but required Pioneer Electronics to inform customers and give them a right to object. (*Id.* at pp. 365-366.) The Court of Appeal concluded the notice provision should have been an opt-in notice in which the customers affirmatively consented to disclosure. (*Id*. at pp. 369-370.)

The Supreme Court agreed with the trial court that an opt-out notice was sufficient to protect the privacy interests of the third-party customers. (*Pioneer Electronics, supra*, 40 Cal.4th at pp. 372-373.) The complaining customers had a reduced expectation of privacy in the information they voluntarily disclosed to Pioneer Electronics. (*Id.* at p. 372.) Moreover, these complaining customers presumably would want their personal information disclosed to a class plaintiff who might help them obtain the relief they sought from Pioneer Electronics. (*Ibid.*) Nevertheless, before disclosure, the company had to give customers notice and an opportunity to object to the release of their personal information. (*Id.* at p. 373.) Thus, there was no serious invasion of privacy "given that the affected persons readily may submit objections if they choose." (*Id.* at p. 372.)

As the *Pioneer Electronics* court noted, it required similar procedural safeguards in *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, which addressed the disclosure of non-party financial information. (*Id.* at pp. 654-655.) While this information is discoverable in a proper case, a bank customer's reasonable expectation is that, absent compulsion by legal process, the matters he or she reveals to the bank will be used by the bank for internal bank purposes. (*Id.* at p. 657.) Thus, the *Valley Bank* court held "before confidential customer information may be disclosed in the course of civil discovery proceedings, the bank must take reasonable steps to notify its customer of the pendency and nature of the proceedings and to afford the customer a fair opportunity to assert his [or her] interests by objecting to disclosure . . . ." (*Id.* at p. 658.) This procedural device accommodated considerations of both disclosure and confidentiality. (*Ibid.*)

This notice and opt-out procedure is not limited to the disclosure of financial or consumer information, but also has been applied in the employment context when non-party information is sought during discovery. (See *Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1416, 1418 [privacy notice sent to non-party writers][5]; *Belaire-*

[5] *Alch v. Superior Court, supra*, 165 Cal.App.4th 1412, a class-action lawsuit brought by television writers alleging discrimination against various networks, studios, and talent agencies, sought non-party information about Writers Guild members. (*Id.* at p. 1417.) The trial court ordered notice of disclosure to Writers Guild members; 47,000

West Landscape, Inc. v. Superior Court, *supra*, 149 Cal.App.4th at pp. 561-562 [discovery of contact information of former and current employees subject to opt-out privacy notice].) Privacy notices to third parties also protect the dissemination of consumer records by record holders. (See, e.g., Code Civ. Proc., § 1985.3, subds. (b), (e).)

We recognize not all compelled disclosure warrants procedural safeguards. But these cases generally fall into two categories – non-party, percipient witnesses whose identity was previously disclosed and have no right to object to disclosure (*Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1248-1249, 1251-1252, 1256-1257), and putative class members (*Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, 969, 974; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1336-1337). For these putative class members, there is an assumption that they want their information disclosed because the class action involves a vindication of their statutory rights (*Crab Addison*, *supra*, at pp. 972-973). A similar assumption is expressed in *Pioneer Electronics*, but even when the complaining customers might reasonably expect disclosure or "hope" for disclosure, these customers were entitled to written notice and an opportunity to object before disclosure. (*Pioneer Electronics*, *supra*, 40 Cal.4th at p. 372.)

We glean from the discovery cases, in which courts have grappled with the conflicting interests of the right to disclosure and the state constitutional right to privacy, that trial courts are vested with discretion in considering certain procedural safeguards, including opt-out notice requirements, when disclosure involves the release of confidential, third-party information. (See *Valley Bank of Nevada v. Superior Court*, *supra*, 15 Cal.3d at p. 658; see also *Pioneer Electronics*, *supra*, 40 Cal.4th at p. 372.)

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individuals received the privacy notices and 7,700 recipients objected to disclosure of some or all of the requested information. (*Id*. at p. 1418.) The class action plaintiffs asked the trial court to overrule the objections. (*Ibid*.) Thus, the case addresses the next step – disclosure over objection. (*Id*. at p. 1421.) The Court of Appeal ordered disclosure of demographic and work history but noted there were protective orders in place to control the dissemination of this information. (*Id*. at p. 1426.)

These discovery cases recognize procedural safeguards may be warranted even when, for example, contact information is generally discoverable. (*Pioneer Electronics*, *supra*, at p. 372.) Since the interests at stake here are similar, we conclude the trial court failed to adhere to *Valley Bank*, which vested the trial court with discretion to consider procedural safeguards when disclosure involves the release of third-party information.

Guided by *Valley Bank* and *Pioneer Electronics*, we hold non-member County employees are entitled to notice and an opportunity to object to the disclosure of their personal information. The privacy concerns here are more significant than in *Pioneer Electronics* because there is no underlying presumption these non-member County employees would want their personal information disclosed, as might be the case in class-action litigation in which the disclosure might lead to affirmative relief or the vindication of statutory rights. Rather, the opposite is true. As in *Valley Bank*, employees would assume the personal information they provided to their employer as a condition of employment would not be further disseminated. While there may be a parallel between union representation and class representation, we cannot assume these non-member County employees would perceive a benefit to having their personal information disclosed to the Union. These County employees, whether by inaction or action, are not Union members, and they have a right not to join the Union. The non-members' failure to voluntarily provide their personal information to the Union might indicate their desire not to join the Union, indifference, or simply a desire not to be bothered at home by unwanted mail and telephone calls. (*United States Department of Defense v. Federal Labor Relations Authority*, *supra*, 510 U.S. at p. 501 ["Employees can lessen the chance of such unwanted contacts by not revealing their addresses to their exclusive representative."].)

We reject the Union's contention that based upon *Golden Empire Transit*, *supra*, PERB Decision No. 1704-M, at pages 7-8, the Union is entitled to personal information even over objection. *Golden Empire Transit* was not decided under California law. Instead, the Board relied on labor law holding this information is presumptively relevant.

Since this is the wrong test, we also reject the Union's reliance on additional authority not decided under California law.

The notice and opt-out procedure used in *Pioneer Electronics* and appropriate here does not deprive the Union of its right to the information, but simply recognizes that before disclosure, the holder of the information (the County) must inform non-member County employees whose privacy interests are at stake. Individual non-member County employees will have an opportunity to object, and if the Union seeks to challenge the objection, as was the case in *Alch v. Superior Court*, *supra*, 165 Cal.App.4th at pages 1419-1420, it may do so before the Commission. At the end of the day, the Union will be able to communicate directly with those non-members who do not opt-out (or whose objections have been overruled) and will no longer be required to communicate to non-members through annual *Hudson* notices.

This opt-out notice procedure does not provide an unfair advantage to the County or a disadvantage to the Union in collective bargaining matters. (See *Pioneer Electronics*, *supra*, 40 Cal.4th at p. 374.) Rather, it recognizes the previously overlooked individual rights of the County employees. If, as the Union represented during oral argument, non-member County employees will not respond to the opt-out notice, the Union will obtain the personal information it wants *and* will do so in accordance with California's privacy laws. In sum, we conclude before the County discloses the personal information of non-member County employees, it must give them notice and an opportunity to object.[6]

CONCLUSION

Since the trial court's order denying the petition does not address procedural safeguards before disclosure, we reverse and remand to the trial court to enter a new order denying the petition but directing the County and Union to meet and confer on a

[6] Our constitutional analysis obviates the need to address any remaining issues raised by the parties.

proposed notice for the trial court's review, which includes notice to non-member County employees and an opportunity for the non-member employees to object to disclosure. Upon the trial court's approval of the notice, the County shall send the notice to the non-member County employees.

DISPOSITION

The judgment is reversed and remanded for consideration in light of the court's opinion. Each party to bear its own costs on appeal.

CERTIFIED FOR PUBLICATION

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.