

PERB Rejects City of San Diego's Attack on Public Employee Pensions

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In a decision certain to have far-reaching consequences for public employee pensions in California, the Public Employment Relations Board (PERB) has issued a decision vacating the effects of San Diego's Proposition B because the city failed to meet and confer with its unions over the controversial pension reform proposal. Proposition B, passed by voters in June, 2012, replaced a defined-benefit retirement plan with a 401(k)-type plan for most city employees.

California's Meyers-Milias-Brown Act (MMBA) requires public employers to "meet and confer in good faith" with employee unions over proposed changes to the wages, hours, terms and conditions of employment, including employee benefits. Employers are required to meet and confer even when those changes are proposed through the municipal legislative process, such as by amendment to a city charter.

City Officials Tried to Circumvent MMBA Requirements

Proposition B, also called the "Comprehensive Pension Reform Initiative", was billed as a "citizen's initiative", despite the role of the San Diego mayor, city councilmembers, city attorney and other city staff in drafting, promoting, funding and endorsing the measure. The mayor, who by the language of the city charter is primarily responsible for negotiations with the unions, claimed to be acting solely as a "private citizen" who therefore was not subject to MMBA. City officials refused repeated requests from the affected unions to meet and confer over the proposed initiative before it was placed on the ballot.

The unions' efforts to remove the proposition from the ballot, and to stop its implementation once it passed, were unavailing. The superior court also denied the City's effort to prevent PERB from adjudicating the unfair labor practice charges filed by the unions in early 2012. A PERB administrative law judge heard the case over several days in July, 2012, and issued a proposed decision in February, 2013. The full Board issued its decision on December 29, 2015, nearly three years later.

The key to this ruling is PERB's finding the San Diego mayor, as the City's chief negotiator, had a duty to meet and confer with the City's labor unions over a ballot initiative that was de facto sponsored by City government. The mayor could not avoid this responsibility by declaring that he was acting merely as a private citizen while leading the effort to pass Proposition B. Under agency principles, PERB said, the mayor's actions were those of a high-ranking elected official tasked by the City Charter and the City Council with conducting labor negotiations on the City's behalf.

PERB Vacates Effects of the Initiative

The City argued PERB could not prevent Proposition B's implementation because it had no jurisdiction over the initiative once it became law. San Diego's

voters, in other words, had made the unions' unfair practice claims moot. The Public Employment Relations Board, the City argued, could not undo a decision by the voters.

The PERB agreed it had no jurisdiction over changes already implemented by voters, so the Board instead ordered the City either to join the unions in a court action to set Proposition B aside or to pay the attorney fees and costs necessary for the unions to seek that relief. The PERB also ordered the City to restore to employees the pension benefits that existed before the initiative was adopted and to make the affected employees whole for lost pension benefits, with interest. The City also was required by PERB to post a notice at all City work locations acknowledging its violations of the statute.

The decision in *San Diego Municipal Employees Association, et al. v. City of San Diego* (PERB Decision No. 2464-M) is just the latest ruling in the ongoing struggle in California for meaningful pension reform that protects the rights of employees to vested retirement benefits while addressing the unfunded liability dilemma confronting cities and counties throughout the state. San Diego's refusal to meet and confer over Proposition B was costly. An appeal by the City of San Diego is likely.

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