

CLIENT NEWS BRIEF

Mayor-Sponsored Pension Reform Ballot Measure Triggered Meet and Confer Requirement, Court Rules

When a public official with responsibility for labor relations sponsors a ballot measure affecting workers' terms and conditions of employment, the duty to meet and confer arises, the California Supreme Court recently ruled. ([Boling v. Public Employment Relations Board](#))

Background

In 2010, San Diego Mayor Jerry Sanders developed a citizen's initiative to eliminate traditional pensions for new hires. Sanders told the press that his purpose for pursuing pension reform through a citizen's initiative rather than through a measure proposed by City Council was to avoid the meet and confer process.

The City of San Diego is a charter city with a "strong mayor" form of government. As mayor, Sanders' responsibilities include acting as the city's chief executive officer, serving as its designated bargaining agent, and recommending measures to the City Council. (In other cities, these duties may be assigned to a city manager.)

Sanders actively developed and promoted the initiative in his official capacity. He issued news releases bearing his official title, approved a "message from Mayor Jerry Sanders" soliciting signatures for the initiative, and recommended to the Council that pensions be replaced with 401(k)-style plans. His staff also assisted in developing the proposal and gathering signatures for the initiative.

After the initiative garnered sufficient support to qualify for the ballot, the San Diego Municipal Employees Association wrote to Sanders, demanding that the city meet and confer on the grounds that Sanders had promoted the initiative in his official capacity. When the city refused, the union filed an unfair labor practice charge with the Public Employment Relations Board (PERB) alleging violations of the Meyers-Milias-Brown Act (MMBA).

PERB ruled in the union's favor, finding that the city had engaged in an unfair labor practice in failing to meet and confer and that Sanders had acted in his official capacity in supporting the initiative. The Court of Appeal reversed, determining that the MMBA's meet and confer requirements only to apply to proposals considered by a governing body.

In overturning the appellate court's decision, the California Supreme Court found that the MMBA imposes a duty to meet and confer not just on the governing board, but also on "administrative officers or other representatives."

As the city's chief executive officer and bargaining agent, Sanders had a duty to meet and confer with the union regarding any matter that would affect the terms and conditions of employment, even though the policy was being pursued through a citizen's initiative. The Court reasoned that "[a]llowing public officials to purposefully evade the meet-and-confer requirements of the MMBA by officially sponsoring a citizens' initiative would seriously undermine

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the policies served by the statute: fostering full communication between public employers and employees, as well as improving personnel management and employer-employee relations.”

The Supreme Court also held that the appellate court should have given deferential treatment to PERB’s decision, noting that the lower court should have “followed PERB’s interpretation unless ... clearly erroneous.”

Takeaways

Local city and county officials with labor relations responsibilities should be cautious when it comes to promoting in their official capacities ballot measures that affect represented workers’ terms and conditions of employment, as this may give rise to the duty to meet and confer.

If officials choose to promote ballot measures affecting the terms and conditions of employment of their agency’s employees, they should make clear they are doing so in their individual capacities. They should not use staff time or agency resources to develop policy, promote policy, or solicit signatures. To do otherwise may give rise to a duty to meet and confer.

For more information about this decision or about meet and confer obligations in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).