

CLIENT NEWS BRIEF

Meet-and-Confer Requirement Does Not Apply to Pension Reform Measure Placed on Ballot through Voter Initiative Process

In *Boling v. Public Employment Relations Board* (Apr. 11, 2017, D069626) ___ Cal.App.4th ___ (*Boling*), the Fourth District Court of Appeal invalidated a decision by the Public Employment Relations Board (PERB) holding that a city council violated the Meyers-Milias-Brown Act (MMBA) by placing a voter initiative to amend the city's charter on the ballot without first meeting and conferring with the unions representing affected city employees. In doing so, the court rejected PERB's reasoning that the mayor's public support of the initiative effectively transformed it from a voter initiative to a city council-sponsored ballot proposal subject to meet-and-confer requirements.

This case addresses a longstanding issue. In a 1984 case, *People ex rel. Seal Beach Police Officers Assn. v City of Seal Beach*, the California Supreme Court concluded that a charter amendment proposed by a governing body is subject to the MMBA's requirements, but cautioned that the case did "not involve the question whether the meet-and-confer requirement was intended to apply to charter amendments proposed by initiative." Three decades after *Seal Beach*, a California appellate court has addressed that question for the first time.

The *Boling* case traces back to a City of San Diego decision on an issue that rarely evades controversy: public employee pension plans. In 2010, the city's mayor and a city councilmember separately announced plans to replace the city's existing defined benefit pension plans with 401(k)-style defined contribution plans for new hires. Ultimately, supporters of the mayor's proposal and of the city councilmember's competing proposal joined forces to produce an initiative to adopt a charter amendment mandating changes to pension plans for new hires.

The California Constitution provides two options for proposing an amendment to a city charter: an initiative qualified for the ballot through signed voter petitions, or a ballot measure sponsored by the governing body of the city. Rather than pursuing a ballot measure sponsored by the San Diego City Council (City Council), which the mayor believed the City Council would not place on the ballot "under any circumstances," he launched a citizens' initiative for his pension reform proposal. The parties to the case never disputed the fact that the mayor and his staff assisted in drafting the proposal and in campaigning for the citizens' initiative.

In the summer of 2011, proponents of the proposal circulated a voter petition to place the initiative on the ballot. Meanwhile, a municipal employees' union wrote to the mayor and asserted that the MMBA required the city to meet and confer over the initiative before it could be placed on the ballot. The city disagreed and refused to do so. In November 2011, the county's registrar of voters reviewed and certified the petition. Subsequently, the City Council passed a resolution of its intention to put the measure on the ballot.

In January 2012, the union filed an unfair practice charge. Other unions followed suit. Later that month, the City Council enacted an ordinance placing

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the initiative on the June 2012 ballot. Shortly thereafter, PERB issued a complaint against the city and ordered an expedited administrative hearing. PERB also filed a superior court action seeking a preliminary injunction to bar the city from putting the initiative on the ballot. The trial court denied PERB's request for an injunction and the voters overwhelmingly approved the initiative in June 2012.

However, the proceedings before PERB continued and the case went to a hearing in July 2012. At the conclusion of the PERB hearing, the administrative law judge (ALJ) issued a proposed decision determining that the mayor, acting under the color of his elected office and with support of councilmembers and the city attorney, violated the MMBA by denying the unions the opportunity to meet and confer over the mayor's decision to launch and pursue the initiative. The ALJ further determined that since the mayor was an agent of the city, and because the city ratified the mayor's policy decision, the obligation to meet and confer extended to the city. PERB agreed and issued a decision consistent with the ALJ's proposed decision.

The city and the initiative's proponents filed separate petitions for writs of extraordinary relief with the Fourth District Court of Appeal challenging PERB's decision, which the Court of Appeal consolidated for purposes of its decision.

The Court of Appeal disagreed with PERB's conclusions and determined that the MMBA's meet-and-confer requirement does not apply when a proposed charter amendment is placed on the ballot by citizen proponents through the initiative process. Instead, only a governing body-sponsored proposal will trigger the meet-and-confer requirement.

Central to the court's analysis was the principle that procedural requirements that govern city council action generally do not apply to citizen-sponsored initiatives. Unlike a charter amendment proposed by a city council, a voter-initiated charter amendment proposal *must* be placed on the ballot; the city council has no discretion to decide otherwise. (Elec. Code, § 9255.) In contrast, a city council's vote to adopt a ballot proposal for submission to its voters is discretionary and is thus subject to certain procedural constraints, including the requirement to negotiate. Moreover, the court reasoned, the MMBA's meet-and-confer provisions expressly refer to "governing body" proposals, which a voter initiative is not.

The court further determined that PERB erred when it applied legal theories regarding principal-agent relationships to transform the initiative from a citizen-sponsored initiative into a governing body-sponsored ballot proposal, even given the mayor's role in developing and supporting the initiative. This was in part because under the express language of the city's charter, the mayor had no authority to place a City Council-sponsored ballot proposal on the ballot without City Council approval, and there were no indicators that he obtained such approval. The court also rejected PERB's arguments under the theories of apparent authority, respondeat superior, and ratification as legally erroneous.

This case resolves a major question regarding the balance of power between voter-driven initiatives and union collective bargaining rights, with the court deciding the issue in favor of the electoral process.

For more information on the *Boling* decision or a local government agency's collective bargaining duties, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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