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OPINION	:	No. 11-702
	:	
of	:	June 11, 2012
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THE BAKERSFIELD POLICE OFFICERS ASSOCIATION has requested leave to sue in quo warranto upon the following question:

Did the City of Bakersfield sufficiently meet and confer with the Bakersfield Police Officers Association before placing an initiative measure on the November 2010 ballot which, after it was passed by the electorate, resulted in the enactment of ordinances that (1) set a new and different pension benefit calculation formula and contribution level for City public safety officers hired on or after January 1, 2011, and (2) provided that the new benefit formula and contribution level may be amended or repealed only by a vote of the electorate?

CONCLUSION

Leave to sue in quo warranto is GRANTED to decide whether the City of Bakersfield sufficiently met and conferred with the Bakersfield Police Officers Association before placing an initiative measure on the November 2010 ballot which,

after it was passed by the electorate, resulted in the enactment of ordinances that (1) set a new and different pension benefit calculation formula and contribution level for City public safety officers hired on or after January 1, 2011, and (2) provided that the new benefit formula and contribution level may be amended or repealed only by a vote of the electorate.

ANALYSIS

In the November 2010 municipal general election, voters of the City of Bakersfield (City) passed an initiative measure, Measure D, which resulted in the enactment of ordinances that set a new pension benefit calculation formula and a new pension contribution level for public safety officers hired on or after January 1, 2011, and that made these pension changes subject to amendment or repeal only by a subsequent vote of the electorate. The Bakersfield Police Officers Association (BPOA) has requested leave to sue the City in quo warranto based on its claim that the City unlawfully exercised its power to place Measure D on the ballot. Specifically, BPOA alleges that the City failed to comply with state and local meet-and-confer requirements before submitting Measure D to the voters, and that a quo warranto action is the appropriate legal process for testing the regularity of the proceedings that led to the new pension rules.

The City does not dispute that quo warranto is an appropriate vehicle for testing the regularity of such proceedings, nor does the City maintain that it was not legally required to meet and confer with BPOA. Rather, the City contends that it did in fact fully comply with all applicable meet-and-confer requirements in that it engaged in “exhaustive” negotiations with BPOA over pension issues in general, and over Measure D in particular. In the alternative, the City asserts that BPOA’s application should be denied because any failure to sufficiently meet and confer is attributable to BPOA.

Code of Civil Procedure section 803 provides, in relevant part:

An action may be brought by the attorney-general, in the name of the people of this state, upon his [or her] own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state.

In determining whether to grant an application to file a quo warranto action in superior court, we do not attempt to resolve the merits of the controversy. Rather, we

decide whether the application presents a substantial issue of fact or law that warrants judicial resolution, and whether granting the application would serve the public interest.¹ After carefully considering the parties’ legal and factual arguments, and for the reasons that follow, we conclude that this matter presents substantial issues warranting judicial resolution, and that a judicial resolution of the controversy is in the public interest. Accordingly, we grant leave to sue in quo warranto.

In a proper case, an action in quo warranto may be filed to resolve allegations that a charter city’s² placement of an initiative measure on the ballot was an unlawful exercise of the city’s franchise.³ The California Supreme Court has held that a charter city must comply with the meet-and-confer requirements of the Meyers-Milias-Brown Act (MMBA or Act)⁴—which governs relations between local public agency employers and local public employee organizations—before placing an initiative measure on the ballot that would affect matters within the scope of the Act.⁵

“The MMBA has two stated purposes: (1) to promote full communication between public employers and employees; and (2) to improve personnel management and employer-employee relations within the various public agencies.”⁶ To achieve these purposes, “the MMBA requires governing bodies of local agencies to ‘meet and confer [with employee representatives] in good faith regarding wages, hours, and other terms and conditions of employment’ and to ‘consider fully’ such presentations made by the employee organizations,”⁷ and to do so “prior to arriving at a determination of policy or

¹ 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 86 Ops.Cal.Atty.Gen. 205, 208-209 (2003).

² The City is governed according to a charter adopted by the City’s electorate in 1914 and approved by the Legislature in 1915. 1915 Stat., Assembly Con. Res. No. 3, ch. 4, 1552-1589; *see also* <http://www.qcode.us/codes/bakersfield>.

³ *People ex rel. Seal Beach Police Officers’ Assn. v. City of Seal Beach (Seal Beach)*, 36 Cal. 3d 591, 595 & n. 3 (1984); *see City of Fresno v. People ex rel. Fresno Firefighters*, 71 Cal. App. 4th 82, 89 (1999); *Intl. Assn. of Fire Fighters v. City of Oakland*, 174 Cal. App. 3d 687, 693-698 (1985); *see also* 74 Ops.Cal.Atty.Gen. 77 (1991).

⁴ Govt. Code §§ 3500-3511.

⁵ *Seal Beach*, 36 Cal. 3d at 602.

⁶ *Seal Beach*, 36 Cal. 3d at 597; *see* Govt. Code § 3500; *DiQuisto v. Co. of Santa Clara*, 181 Cal. App. 4th 236, 254 (2010).

⁷ *Seal Beach*, 36 Cal. 3d at 596 (quoting Govt. Code § 3505); *see Coachella Valley Mosquito & Vector Control Dist. v. Cal. Pub. Empl. Rel. Bd.*, 35 Cal. 4th 1072, 1083

course of action.”⁸ Chapter 2.76 of the Bakersfield Municipal Code substantially parallels the MMBA in these respects.⁹

In *People ex rel. Seal Beach Police Officers’ Association v. City of Seal Beach (Seal Beach)*, the Attorney General granted city employee associations leave to sue the City of Seal Beach in quo warranto after Seal Beach voters passed a ballot initiative that amended the city’s charter to require the immediate firing of any city employee who participated in a strike.¹⁰ When the matter reached the California Supreme Court, the Court first noted that the propriety of a quo warranto proceeding to test the regularity of the initiative measure was “not questioned.”¹¹ And, in a later case, the Court of Appeal held that quo warranto is the *only* legal mechanism for attacking the legitimacy of a charter-amending initiative alleged to have been placed on the ballot in violation of the MMBA.¹²

While Measure D resulted in the adoption of new City ordinances, rather than a modification of the City’s charter, the relevant principles are the same. In our view, the Supreme Court’s holding in *Seal Beach* that a charter city must comply with the MMBA before proposing a ballot measure to amend its charter applies with equal force to a charter city proposing a ballot measure to enact new ordinances, under its existing charter, that likewise affect the terms and conditions of employment covered by the MMBA.

Having established that quo warranto may be an appropriate process to invoke in order to resolve legal challenges of this sort, we turn our attention to the allegations at issue under the particular circumstances of this controversy. In their statements of the facts presented, both parties recount a roughly similar general sequence of events.

(2005); *Intl. Assn. of Firefighters Local Union 230 v. City of San Jose*, 195 Cal. App. 4th 1179, 1186 (2011).

⁸ Govt. Code § 3505.

⁹ Bakersfield Mun. Code § 2.76.60.

¹⁰ *See Seal Beach*, 36 Cal. 3d at 595.

¹¹ *Seal Beach*, 36 Cal. 3d at 595 and n. 3. Addressing the merits, the Court concluded that, although a charter city has a constitutional right to amend its charter via the initiative process, the city was nonetheless required to meet and confer in good faith under the MMBA *before* placing the no-strike measure on the ballot. *Id.* at 595-602.

¹² *Assn. of Fire Fighters v. City of Oakland*, 174 Cal. App. 3d at 693-698; *see also City of Fresno v. People ex rel. Fresno Firefighters*, 71 Cal. App. 4th at 89.

However, the parties draw materially different inferences and legal conclusions from the events.

BPOA's most recent Memorandum of Understanding (MOU) with the City regarding pension benefits expired on June 30, 2007. To date, the parties have been unable to agree on a successor MOU. Under the most recent MOU, a City police officer's pension was calculated under a "3% at 50" defined-benefit formula, meaning generally that an officer would be eligible to retire at the age of 50 with a pension calculated at 3% of the officer's final compensation multiplied by the number of the officer's years of service. The most recent MOU also provided that the City was to make specified contributions to each officer's retirement account in amounts based on the officer's hiring date and length of service. During the course of negotiations over a successor MOU, pension issues were raised and discussed at various times, but the parties were unable to agree on new terms and formulas.

On May 6, 2010,¹³ the City, through its labor negotiator, informed BPOA that the City was contemplating a ballot measure that would amend the City's municipal code with respect to public safety employee pension benefits. On May 19, the City Council directed the City Attorney to draft a ballot measure to that effect, and on May 20, the City's labor negotiator informed BPOA of this development. Shortly thereafter, the parties agreed to meet and confer on the proposed measure. The City's representative proposed a June 2 meeting, but BPOA's representative was unavailable on that date. The parties eventually settled on a meeting date of June 16. Meanwhile, on June 9, the City Council voted to place the pension benefits measure on the November ballot. The Council made the measure subject to amendment on or before June 30, and subject to withdrawal on or before August 11. As drafted, Measure D read as follows:

Shall the City of Bakersfield adopt the following law:

Effective January 1, 2011, new City of Bakersfield sworn public safety employees will pay 100% of their employee pension contribution and be eligible for a maximum retirement allowance with the Board of Administration of the Public Employees' Retirement System (PERS) at a 2% at age 50 formula based on their average salary calculated over 36 highest paid consecutive months.

As we have said, the parties disagree sharply over the legal significance and consequence of these events. BPOA argues that the City violated the MMBA and the parallel municipal code provisions by failing to meet and confer with respect to Measure

¹³ In this chronology, all date references are to the year 2010.

D before the City Council voted to place Measure D on the ballot. The City maintains that the issue of pension reforms had been discussed multiple times in the months and years leading up to the Council's decision. The City further asserts that it offered to meet with BPOA on June 2—*i.e.*, before it voted to put Measure D on the ballot, and that any failure of to meet and confer is therefore attributable to BPOA. The parties also disagree as to whether the City apprised BPOA of the June 30 deadline for amending the language of Measure D. BPOA asserts that the City disseminated a written “timeline” regarding Measure D that contained various dates leading up to the November election, but which excluded the June 30 amendment deadline, and that BPOA did not otherwise have knowledge of that deadline. The City counters that BPOA was represented at both the June 9 City Council meeting, when the amendment deadline was first mentioned, and at a City Council meeting on June 30 (the day of the deadline), and that BPOA therefore knew or should have known of the deadline.

In any event, the parties met on June 16 and July 28. At the latter meeting, BPOA's representative inquired as to whether the proposed measure could still be amended. The City's labor representative, after consulting with the City Attorney, informed BPOA that the time for amending the measure (*i.e.*, the June 30 deadline) had already passed. The parties were unable to agree to any additional meeting dates between July 28 and the August 11 date that had been set as the deadline for withdrawing the measure from the November ballot. BPOA asserted that the parties had not had a sufficient opportunity to meet and confer over the pension measure, and that it should therefore be withdrawn. The City disagreed. Measure D remained on the ballot, and was passed in the November 2010 municipal general election.

Measure D is now codified as Chapter 2.85 of the Bakersfield Municipal Code, which contains the following four ordinances:

§ 2.85.010 Definitions.

A. As used in this chapter, “public safety employee” means any sworn police or fire safety personnel hired on or after January 1, 2011 and who has successfully completed his or her probationary period.

B. As used in this chapter, “EPMC” means employer paid member contribution as that term is defined by CalPERS on the effective date of the ordinance codified in this chapter.

§ 2.85.020 Pension benefits for public safety employees.

Effective January 1, 2011, a public safety employee will be eligible for a maximum retirement allowance with the Board of Administration of the Public Employees' Retirement System (PERS) at a two percent at age fifty formula based on his or her average salary calculated over thirty-six highest paid consecutive months.

§ 2.85.030 Employer paid member contribution (EPMC).

Effective January 1, 2011, a public safety employee shall pay one hundred percent of their [sic] member contribution to the Public Employees' Retirement System (PERS).

§ 2.85.040 Amendments.

Chapter 2.85 was adopted by the voters of the city of Bakersfield on November 2, 2010 and therefore, may only be changed or repealed by a vote of the people of the city of Bakersfield.

We believe that the subjects covered and affected by Measure D fall within the meaning of "wages, hours, and other conditions of employment," to which the obligation to meet and confer attaches under both the MMBA¹⁴ and the Bakersfield Municipal Code.¹⁵ Pension benefits are an element of a public employee's compensation,¹⁶ and Measure D affects that compensation for new public safety employees by setting a lower-yielding benefit calculation formula. Measure D also affects compensation in that these employees are now required to pay, out of current wages, the entire amount of their retirement contributions. Furthermore, because the new rules may not be changed or repealed except by a vote of the City's electorate, Measure D effectively removes the subject of pension benefit calculation formulas and member contribution levels from future bargaining discussions.

It appears to us that the parties' dispute boils down to a disagreement over whether the parties made good-faith attempts to negotiate the relevant pension issues and/or the terms of Measure D. The question of good faith in labor negotiations "is primarily a

¹⁴ Govt. Code § 3505.

¹⁵ Bakersfield Mun. Code § 2.76.60.

¹⁶ *Betts. v. Bd. of Admin.*, 21 Cal. 3d 859, 863 (1978); 89 Ops.Cal.Atty.Gen. 117, 119 (2006).

factual determination based on the totality of the circumstances.”¹⁷ Here, the parties present materially different views of the facts. In determining whether to grant leave to sue, we do not attempt to adjudicate disputed facts, and we do *not* reach any conclusion here as to whether state and local meet-and-confer requirements were satisfied with respect to Measure D. We conclude only that a quo warranto action is the appropriate legal proceeding in which to resolve this issue. Further, we conclude that the question of Measure D’s validity, and that of the ordinances it gave rise to, are matters of public interest, and that it would therefore serve the public interest for them to be properly adjudicated.

Accordingly, leave to sue in quo warranto is GRANTED to decide whether the City sufficiently met and conferred with BPOA before placing an initiative measure on the November 2010 ballot which , after it was passed by the electorate, resulted in the enactment of ordinances that (1) set a new and different pension benefit calculation formula and contribution level for City public safety officers hired on or after January 1, 2011, and (2) provided that the new benefit formula and contribution level may be amended or repealed only by a vote of the electorate.

¹⁷ *Placentia Fire Fighters v. City of Placentia*, 57 Cal. App. 3d 9, 25 (1976) (internal citation omitted).