

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



SAN DIEGO MUNICIPAL EMPLOYEES  
ASSOCIATION,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CE-746-M

PERB Decision No. 2464a-M

May 2, 2019

DEPUTY CITY ATTORNEYS ASSOCIATION  
OF SAN DIEGO,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CE-752-M

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO, LOCAL 127,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CE-755-M

SAN DIEGO CITY FIREFIGHTERS LOCAL 145,

Charging Party,

v.

CITY OF SAN DIEGO,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CE-758-M

Appearances: Smith, Steiner, Vanderpool & Wax by Ann M. Smith, Attorney, for San Diego Municipal Employees Association; Olins, Riviere, Coates & Bagula by Adam Chaikin, Attorney, for Deputy City Attorneys Association of San Diego; Rothner, Segall & Greenstone by Anthony Resnick, Attorney, for American Federation of State, County and Municipal Employees, AFL-CIO, Local 127; Smith, Steiner, Vanderpool & Wax by Fern M. Steiner, Attorney, for San Diego City Firefighters, Local 145; Donald R. Worley, Assistant City Attorney, for City of San Diego; and Lounsbery, Ferguson, Altona & Peak by Kenneth H. Lounsbery and James P. Lough, Attorneys, for Non-Party Petitioners to File Informational Brief in Support of the City's Exceptions Catherine A Boling, T.J. Zane and Stephen B. Williams.

Before Banks, Shiners, Krantz, and Paulson, Members.

### DECISION

This case is again before the Public Employment Relations Board (PERB or Board) after the Court of Appeal for the Fourth Appellate District issued its decision on remand from the California Supreme Court. In *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 (*Boling*), the Supreme Court upheld the Board's decision in this matter and concluded that the City of San Diego (City) violated the Meyers-Milias-Brown Act (MMBA)<sup>1</sup> and PERB Regulations.<sup>2</sup> Specifically, the Supreme Court held that the City failed and refused to meet and confer with four recognized employee organizations (Unions) representing City employees over Proposition B, a pension reform initiative championed by the City's Mayor Jerry Sanders and other City officials, and ultimately approved by voters in a municipal election.

As the Supreme Court stated, "when a local official with responsibility over labor relations [like Mayor Sanders] uses the powers and resources of his office to play a major role

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<sup>1</sup> The MMBA is codified at Government Code section 3500 et seq. Unless otherwise noted, all statutory references are to the Government Code.

<sup>2</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

in the promotion of a ballot initiative affecting terms and conditions of employment, the duty to meet and confer arises.” (*Boling, supra*, 5 Cal.5th at p. 919.) And when a public employer refuses to comply with its duty to meet and confer, as the City did here, it violates the MMBA. Thus, in *Boling*, the Supreme Court reversed the Fourth District’s earlier opinion in this matter and reinstated the Board’s original finding that the City violated the MMBA.

In remanding the case, the Supreme Court directed the Fourth District to address the appropriate judicial remedy. On March 25, 2019, the Fourth District issued its opinion on remand. (*Boling v. Public Employment Relations Board* (2019) 33 Cal.App.5th 376—.) That opinion modified the Board’s original order in two respects. With regard to the compensatory remedy, the Fourth District ordered

the City to meet and confer over the effects of [Proposition B] and to pay the affected current and former employees represented by the Unions the difference, plus seven percent annual interest, between the compensation, including retirement benefits, the employees would have received before [Proposition B] became effective and the compensation the employees received after [Proposition B] became effective. The City’s obligation to comply with the compensatory remedy extends until completion of the bargaining process, including the exhaustion of impasse procedures, if an impasse occurs.

(*Id.*, slip decision at p. 4.) Additionally, the Fourth District modified the Board’s original cease-and-desist remedy “to order the City to cease and desist from refusing to meet and confer with the Unions and, instead, to meet and confer with the Unions upon the Unions’ request before placing a charter amendment on the ballot that is advanced by the City and affects employee pension benefits and/or other negotiable subjects.” (*Ibid.*) As modified, the Fourth District affirmed the Board’s remedial order.

In accordance with the Fourth District's order, and pursuant to section 3509, subdivision (a) of the Government Code, it hereby is ORDERED that the City, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and confer with the Unions before placing a charter amendment on the ballot that is advanced by the City and affects employee pension benefits and/or other negotiable subjects.

2. Interfering with bargaining unit members' right to participate in the activities of an employee organization of their own choosing.

3. Denying the Unions their right to represent employees in their employment relations with the City.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Upon request, meet and confer with the Unions before placing a charter amendment on the ballot that is advanced by the City and affects employee pension benefits and/or other negotiable subjects.

2. Upon request by the Unions, meet and confer with the Unions over any negotiable effects on subjects within the scope of representation resulting from the adoption of Proposition B.

3. Upon request by the Unions, join in and/or reimburse the Unions' reasonable attorneys' fees and costs for litigation undertaken to rescind the provisions of Proposition B, and to restore the status quo as it existed before the adoption of Proposition B.

4. Make affected current and former bargaining unit employees represented by the Unions whole by paying them the difference, plus seven percent annual interest,

between the compensation, including retirement benefits, the employees would have received before Proposition B became effective and the compensation the employees received after Proposition B became effective. The City's obligation to comply with the compensatory remedy extends until completion of the bargaining process ordered in 2. above, including the exhaustion of impasse procedures, if an impasse occurs.

5. Within ten (10) workdays after service of this decision, post at all work locations in the City, where notices to employees represented by the Unions are customarily posted, copies of the Notice attached hereto as an Appendix. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the City to communicate with employees represented by the Unions. The Notice must be signed by an authorized agent of the City, indicating that the City will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

6. Within thirty (30) workdays after service of this decision notify the General Counsel of PERB, or his or her designee, in writing of the steps taken to comply with the terms of this Order. Continue to report in writing to the General Counsel, or his or her designee, periodically thereafter as directed. All reports regarding compliance with this Order shall be served concurrently on the Unions.

PER CURIAM



**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**

After a hearing in Unfair Practice Case Nos. LA-CE-746-M, *San Diego Municipal Employees Association v. City of San Diego*; LA-CE-752-M, *Deputy City Attorneys Association of San Diego v. City of San Diego*; LA-CE-755-M, *American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 v. City of San Diego*; and LA-CE-758-M, *San Diego City Firefighters Association, Local 145 v. City of San Diego*, in which the parties had the right to participate, it has been found that the City of San Diego (City) violated the Meyers-Milias-Brown Act (MMBA) and Public Employment Relations Board (PERB) Regulations. (Cal. Code Regs., tit. 8, § 31001 et seq.) The City breached its duty to meet and confer in good faith with the San Diego Municipal Employees Association, the Deputy City Attorneys Association of San Diego, the American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, and the San Diego City Firefighters Association, Local 145 (collectively, Unions) in violation of Government Code section 3505 and PERB Regulation 32603(c) when it failed and refused to meet and confer over the Mayor's proposal for pension reform. By this conduct, the City also interfered with the right of City employees to participate in the activities of an employee organization of their own choosing, in violation of Government Code section 3506 and PERB Regulation 32603(a), and denied the Unions their right to represent employees in their employment relations with a public agency, in violation of Government Code section 3503 and PERB Regulation 32603(b).

As a result of this conduct, we have been ordered to post this Notice and we will:

**A. CEASE AND DESIST FROM:**

1. Refusing to meet and confer with the Unions before placing a charter amendment on the ballot that is advanced by the City and affects employee pension benefits and/or other negotiable subjects.
2. Interfering with bargaining unit members' right to participate in the activities of an employee organization of their own choosing.
3. Denying the Unions their right to represent employees in their employment relations with the City.

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:**

1. Upon request, meet and confer with the Unions before placing a charter amendment on the ballot that is advanced by the City and affects employee pension benefits and/or other negotiable subjects.
2. Upon request, meet and confer with the Unions over any negotiable effects on subjects within the scope of representation resulting from the adoption of Proposition B.

3. Upon request by the Unions, join in and/or reimburse the Unions' reasonable attorneys' fees and costs for litigation undertaken to rescind the provisions of Proposition B, and to restore the status quo as it existed before the adoption of Proposition B.

4. Make affected current and former bargaining unit employees represented by the Unions whole by paying them the difference, plus seven percent annual interest, between the compensation, including retirement benefits, the employees would have received before Proposition B became effective and the compensation the employees received after Proposition B became effective. The City's obligation to comply with the compensatory remedy extends until completion of the bargaining process in 2. above, including the exhaustion of impasse procedures, if an impasse occurs.

Dated: \_\_\_\_\_

CITY OF SAN DIEGO

By: \_\_\_\_\_

Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.