

# **Bond Case Briefs**

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## **UNIONS - CALIFORNIA**

### **City of Palo Alto v. Public Employment Relations Board**

**Court of Appeal, Sixth District, California. November 23, 2016 - Cal.Rptr.3d - 5 Cal.App.5th 1271 - 2016 WL 6902091 - 2016 L.R.R.M. (BNA) 392, 764**

City petitioned for a writ of extraordinary relief annulling Public Employment Relations Board's (PERB) decision ordering city to rescind its resolution referring a measure to the voters. The Court of Appeal granted a writ of review.

The Court of Appeal held that:

- City failed to consult in good faith with firefighters' union over city's vote to repeal city charter provision requiring binding interest arbitration upon impasses in wage negotiations;
- Requirement to consult in good faith with firefighters' union did not violate the charter city home rule provisions of the California Constitution;
- Evidence supported finding that city council was notified of union's desire to negotiate;
- Separation of powers doctrine barred PERB from ordering city to rescind resolution that violated Myers-Milias-Brown Act (MMBA);
- PERB was authorized to grant relief by declaring that city council's resolution was void; and
- Initiative's passage in election did not render the unfair practice charge moot.

City failed to meet its obligation under the Meyers-Milias Brown Act (MMBA) to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, where the city did not meet and discuss the issues.

The Meyers-Milias Brown Act (MMBA) did not violate the charter city home rule provisions of the California Constitution and the constitutional authority of the city council to propose charter amendments, in requiring a charter city to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, since the MMBA consultation requirement did not make the amendment process significantly less expedient.

Public Employment Relations Board's (PERB) decision did not represent such a sea change in California law as to preclude retroactive application of its decision that the Meyers-Milias Brown Act (MMBA) did not violate the charter city home rule provisions of the California Constitution and the constitutional authority of the city council to propose charter amendments, in requiring a charter city to consult in good faith with firefighters' union over city's vote to place on the ballot for the upcoming election a measure that repealed a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding wages, hours, and other terms and conditions of employment for the city's firefighters, since there was no previously settled rule that binding arbitration was not a mandatory subject of consultation.

Public Employment Relations Board (PERB) did not improperly deprive city of due process and fairness, in considering and rejecting several possible defenses that the city had not argued before sustaining firefighters' union's unfair practice charge against the city for failing to consult in good faith with union under the Meyers-Milias Brown Act (MMBA), since the issue of whether any valid defense existed for the city's acts was encompassed within the broader issue of whether the city violated the MMBA.

Public Employment Relations Board's (PERB) conclusion that firefighters' union gave city council adequate notice to preserve its right to negotiate over city's plan to place on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the conditions of employment for the city's firefighters, in ordering city to rescind its resolution referring the measure to the voters, was supported by substantial evidence, including evidence that the union specifically stated in writing that it wished to consult with the city about proposed changes to the provision and asked the city to comply with the Meyers-Milias Brown Act (MMBA), and evidence that city continued to consider the possible changes until it placed the measure on the ballot one year later.

The separation of powers doctrine barred Public Employment Relations Board (PERB) from ordering city to rescind its resolution placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the conditions of employment for the city's firefighters, as a remedy for the city's violation of the Myers-Milias-Brown Act (MMBA), since PERB's order would compel a legislative act.

A declaration by Public Employment Relations Board (PERB) that city council's resolution was void would be proper relief, on union's Myers-Milias-Brown Act (MMBA) unfair practice charge for city council's failure to negotiate with firefighters' union before placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the firefighters' conditions of employment, since such relief would effectively return the parties to the status quo ante, and would have the affirmative effect of "undoing" the invalid act without impermissibly infringing on legislative powers.

Union's Myers-Milias-Brown Act (MMBA) unfair practice charge, for city council's failure to negotiate with firefighters' union before placing on the ballot a measure that would repeal a city charter provision requiring binding interest arbitration upon impasses in negotiations regarding the firefighters' conditions of employment, was not rendered moot or merely advisory by the passage of the measure in the election, since Public Employment Relations Board (PERB) was able to determine that the city engaged in an unfair practice, and PERB was able to order the city to cease and desist from refusing to meet with the union's members prior to adopting ballot measures to establish or modify rules or regulations for the administration of employer-employee relations.