

## ***A MESSAGE FROM THE PRESIDENT, JULY 2018***

We've almost made it through another sizzling Central Valley summer! Hopefully, in between work, you've been able to make some great memories and escape the heat! We're looking forward to a cool, yet busy fall!

During the last 7-8 years, we (public sector employees) have been dealing with anti-pension efforts by some of the more conservative individuals and groups in regards to our pensions. This was a case I thought would interest many of you- as it relates to a victory labor win.

Then San Diego POA President Brian Marvel led the charge on this effort. Brian has since been elected PORAC President – and I have the utmost confidence of his leading groups in PORAC again such takeaways.

### ***California Supreme Court Reiterates Deference Due to PERB Decisions in Labor Matters and Rejects Ruse By Former Mayor to Evade Meet-and-Confer Responsibilities***

The case of *Boling v. PERB* the California Supreme Court issued a unanimous decision favoring the challenge by public employee unions to a 2012 pension measure in San Diego.

The basic facts are that former San Diego Mayor Jerry Sanders, fearing that he could not command a majority of the City Council to support putting his anti-pension measure on the ballot and seeking to avoid the obligation to meet and confer over the measure if they did, put forward a pension measure in his "citizen" capacity, as opposed to as mayor. The measure forced all new City employees except for new police officers into 401k retirement plans instead of defined benefit plans. The City refused to meet and confer over the initiative, which was approved by voters overwhelmingly in the June 2012 primary election (on the same day as former San Jose Mayor Chuck Reed's ill-fated pension reform measure - Measure B).

The Supreme Court rejected the ruse of Sanders and the City that because Sanders was purportedly acting as a citizen there was no bargaining obligation. As the Supreme Court described, Sanders conceived of the initiative, developed its terms, negotiated with proponents and then used the powers of the Mayor's office to promote it. He even signed ballot arguments in favor of the measure as "Mayor Jerry Sanders."

The Court did not find this a particularly close call: "Allowing public officials to purposefully evade the meet-and-confer requirements of the MMBA by officially sponsoring a citizens' initiative would seriously undermine the policies served by the statute." And it concluded: "when a local official with responsibility over labor relations uses the powers and resources of his office to play a major role in the promotion of a ballot initiative affecting terms and conditions of employment, the duty to meet and confer arises."

In reaching this decision the Court reiterated that, while courts ultimately decide what statutes mean, they must still defer to PERB's interpretations of California labor laws such as Government Code section 3505.

Takeaway: Public entity pension reform measures remain fraught with legal pitfalls. Measure B in San Jose was a disaster - but San Jose realized it quickly and started to repair the damage in

2015 and 2016. Even in San Francisco, where November 2011 Proposition C passed with union support, a significant part of the Proposition was invalidated in the *Protect Our Benefits* decision.

This San Diego litigation took six years to reach the Supreme Court, after proceedings before PERB. PERB ruled that the election should be invalidated but that only a court could do that. The Supreme Court has returned the question of the remedy to the Court of Appeal. San Diego runs the very real risk that a court may ultimately - i.e., several years from now - invalidate the 401k benefits and order all post-2012 employees restored to the pre-existing defined benefit plan (San Diego's charter city retirement system was not subject to PEPRA).

### **Update on Keep California Safe Act 2018**

The "Reducing Crime and Keeping California Safe Act of 2018" will appear on the 2020 ballot, as the failure of some Registrars to timely validate signatures prevented it from qualifying from the 2018 ballot. The initiative will make commonsense changes to fix problems caused by AB 109, Prop 47 and Prop 57.

While some supporters of changes to the California criminal justice system acknowledge that those changes have been "plagued by a lack of vetting and thorough debate" a very vocal minority, including Governor Jerry Brown, adamantly refuse to acknowledge any faults. Brown vetoes such changes. In other instances, the Legislature simply refuses to consider any changes.

The initiative has and will continue to come under attack by those adamantly opposed to any fixes to Prop 47, 57 and AB 109. An old legal adage is: "When the facts are on your side, pound the facts. When the law is on your side, pound the law. When neither is on your side, pound the table." The campaign to oppose the initiative will be a "pound the table" approach, mixed in with some deliberate half-truths designed to mislead the public.

One most recent example of "half-truth" was a recent and deliberately deceptive LA Times editorial, which as written would have readers believe the initiative would drop the limit for felony theft charges to \$250 from the current \$950. The truth is the initiative does not broadly lower the dollar limit for felony theft. Instead, it applies to the discrete instances where a repeat thief has two or more prior and separate convictions and commits a new theft where the value of the money, labor or personal property taken in the new theft exceeds \$250. The change in short, imposes the potential of a felony consequences only for repeat offenders who already have two or more prior convictions.

The LA Times also blithely asserts that "even under current laws, savvy prosecutors can add up the value of stolen goods in order to bring felony charges." Actually, savvy prosecutors know that published case law such as *People v. Hoffman* (2015) 241 Cal.App.4th 1304 and *People v. Salmorin* (2016) 1 Cal.App.5th 738, prohibit aggregation. Savvy prosecutors know that the Attorney General, in cases such as *People v. Chaney* (Case No. A147169), *People v. Wilson* (Case No. E063844)

and *People v. Wallace* (Case No. E063760) has conceded on appeal that amounts from separate theft offenses cannot be aggregated. Savvy prosecutors know that prior legislation to allow aggregation of theft amounts, such as AB 2287 (Lackey and Wilk), have failed to pass.

The initiative will also make common sense changes to parole that will assist law enforcement in the supervision of convicted criminals. The legislature approved similar changes with unanimous bipartisan support in AB 1408. But that legislation was vetoed by the governor.

The initiative will allow Governor Brown to keep his promise to voters that "violent" inmates will not be released early under Prop 57. The initiative allows him to do so by specifying the violent crimes not eligible for release. Dozens of similar attempts by the legislature to do so have failed.

These changes, along with authorizing DNA collection- to help solve violent crimes and exonerate the innocent, and reforming theft laws to address serial thieves and organized theft rings, are common sense fixes.

Fresno DSA, PORAC and all the many partners involved in signature gathering for this initiative are equally committed to calling out the 'table pounding' and misleading claims that will be made by those opponents in the months leading to the 2020 election.

I will have an update in the next newsletter as to the progress or lack of progress regarding Assembly Bill 931. This bill changes the 'use of force' requirement from the current state of "reasonable," to "necessary." This bill was on the assembly floor on Monday, August 6. There has been no new information reported out. Once I receive an update, I will send something out to the membership.

We continue to pray for the safety of the citizens, firefighters and police officers throughout the State of California whose lives are at risk trying to manage and put out these massive wildfires. Stay safe out there and protect one another.

Eric