

THE ZAPPIA LAW FIRM

A PROFESSIONAL CORPORATION

— Labor & Employment Law —

SPECIAL UPDATE

LAW ENFORCEMENT/POLICE AND PUBLIC EMPLOYERS

October 14, 2014

- 1. CITY MUST MEET AND CONFER WITH UNION PRIOR TO IMPLEMENTING A PLANNED REORGANIZATION OF POLICE DEPARTMENT.**
- 2. UNION IS ENTITLED TO ATTORNEYS' FEES UNDER CCP SECTION 1021.5 (PRIVATE ATTORNEY GENERAL) EVEN THOUGH ONLY NINE MEMBERS DERIVED A BENEFIT.**

Summary

The California Court of Appeal held (1) that the City of Indio must demonstrate full compliance with the “meet and confer in good faith” requirements of the MMBA, before the City can implement a planned reorganization of the command staff of the City’s police department; and (2) that the Police Command Unit Association is entitled to recover attorneys’ fees because litigation enforcing police officers’ procedural rights under POBRA conferred a significant benefit on the general public by helping to “maintain stable relations between peace officers and their employers and thus to assure effective law enforcement.”

Background

The City of Indio and the Police Command Unit Association (PCU) were governed by a 2009-2012 MOU [extended by agreement through 2013] which stated: “Prior to instituting any layoffs, the City agrees to meet and confer with the PCU to discuss alternatives.” In March 2012, the new Police Chief informed the PCU that he was implementing a “strategic reorganization” that would eliminate five PCU positions, create three new positions, and that layoffs would be necessary. The City’s plan would eliminate the five upper command positions of captain and lieutenant, which were represented by the PCU, as well as demote some of those officers to sergeant with loss of wages and seniority, lay off at least one of the officers, and demote at least one sergeant who was in the PCU to the position of corporal thus transferring his representation to a different bargaining unit with a loss of wages and seniority.

The City took the position that “*whether* a reorganization took place was not subject to collective bargaining under MMBA because reorganization of the Department’s command structure was a management right ... [h]owever ... the *impact* any such reorganization would have on employees was subject to collective bargaining.” The City notified the affected employees of the changes to their employment status.

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TRIAL COURT

Writ / Injunction

The PCU filed an action for writ of mandate and permanent injunction enjoining the City from implementing the reorganization plan until it complied with the MMBA's good faith meet and confer requirements. In opposition, the City claimed "it had no duty to meet and confer regarding the proposed reorganization or layoffs, only about the effects of the reorganization and layoffs on the PCU's members."

The trial court, without a statement of decision, granted the writ and permanent injunction.

Motion for Attorneys' Fees

PCU brought a motion for attorneys' fees under CCP Section 1021.5 claiming that the action enforced an important right and conferred a benefit on a large group. PCU submitted materials supporting the motion including actual billing rates, actual fees, a request for a Lodestar enhancement and an analysis of missed union dues. The City opposed claiming that the action did not enforce a public right and was not an appropriate private attorney general case in addition to claiming that the fees sought were excessive. The trial court granted the motion by written order stating that PCU was the prevailing party and that only the actual amount of incurred fees would be awarded.

COURT OF APPEAL

Writ / Injunction

In affirming the trial court's ruling, the Court of Appeal concluded that the MMBA meet and confer requirements apply because it could reasonably be concluded that the purpose of the City's reorganization was "to save labor costs by transferring job duties out of a recognized bargaining unit and, as such, would have a significant and adverse effect on wages, hours, or other working conditions," and that the City did not meet its obligation to meet and confer in good faith.

The Court applied the standard set forth in *Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d. 651 ("*Building Material*") where the Supreme Court held "for an action by an employer to fall within the scope of representation, and thus be subject to the mandatory bargaining requirements of the MMBA, it must have a *significant* effect on the 'wages, hours, and other terms and conditions of employment' of the bargaining-unit employees." *Building Material*, however, recognizes certain instances in which an employer may not be required to meet and confer if the employer's need for unfettered authority in making decisions, on balance, outweighs the benefits to employer-employee relations of bargaining about such decisions. *Building Material*, 41 Cal.3d. at 663-664.

The Court found that layoffs, loss of wages and seniority and demotions outweighed the City's need for unfettered decision making, thus the City was required to meet and confer with PCU

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before implementing the reorganization. The City had refused to meet and confer regarding the decision to institute the reorganization plan, only the effects. Further, the City had insisted the reorganization would take place no matter what, and denied PCU any opportunity to respond to the reorganization plan.

The Court held that the City did not satisfy its meet and confer obligations because the City expressed a “predetermined resolve not to budge from an initial position” which is inconsistent with a good faith effort to meet and confer. *Santa Clara County Correctional Peace Officers Association v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1044.)

Motion for Attorneys’ Fees

Enforcement of an Important Right

The courts have routinely held litigation enforcing police officers’ procedural and labor rights enforces important statutory rights. (*Riverside Sheriffs’ Assn. v. County of Riverside* (2007) 152 Cal.App.4th 414, 422 (POBRA); and *People Ex Rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 594 (Supreme Court held Police Officers Association action to enforce MMBA requirements satisfied all prongs of CCP 1021.5.))

Significant Benefit to Large Class of People or the Public Generally

The City argued that the PCU had only nine members and that the action did not benefit a large class of people. The Court disagreed and held that the small number of people in the immediate class before the court was not determinative of this element. The Court found factually that the victory in this action could benefit other labor unions within the City that were undergoing similar reorganizations. Similarly, the Court cited *Baggett v. Gates* (1982) 32 Cal.3d 128, 143, where the Supreme Court held litigation enforcing police officers’ procedural rights under POBRA conferred a significant benefit on the general public by helping to “maintain stable relations between peace officers and their employers and thus to assure effective law enforcement ... No one can be heard to protest that effective law enforcement is not a ‘significant benefit.’”

Necessity and Financial Burden of the Litigation

“A court generally determines whether the litigation places a disproportionate burden on the individual by comparing the expected value of the litigation at the time it was commenced with the costs of litigation.” (*Adoption of Joshua S.* (2008) 42 Cal.4th 945, 952.) The comparison requires a “value judgment whether it is desirable to offer the bounty of a court-awarded fee in order to encourage litigation of the sort involved in this case. ... [A] bounty will be appropriate except where the expected value of the litigant’s own monetary award exceeds by a substantial margin the actual litigation costs.” (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 154-155.)

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The PCU submitted evidence that it stood to gain approximately \$21,000 in the action. The figures were based on an expected one year delay of the implementation of the reorganization plan. The PCU submitted figures of union dues of the expected eliminated and demoted positions as well as the amount of salary cuts expected from the reorganization. Further, the PCU estimated its likelihood of success at 50% , thus it reduced the expected value accordingly. Next, the PCU submitted evidence of attorneys' fees to date of \$50,000. A comparison of the two figures established that the financial burden of the litigation was greater than the expected value of the litigation at the outset of the case. The City presented no evidence to support its argument that the expected value of the litigation was greater than the financial burden.

The Court rejected the argument that a union cannot recover attorneys' fees under Section 1021.5 because enforcement of its members' rights is the reason the union exists. The Court concluded that the \$50,000 in attorneys' fees represented six years of dues of the union members thus a bounty was appropriate in this case.

Indio Police Command Unit Association v. City of Indio, (2014) ____ Cal.App.4th ____.
<http://www.courts.ca.gov/opinions/documents/G050051.PDF>

Note: While we still believe that terminations and layoffs are a management right and thus not subject to bargaining, this decision now blurs the line. Unions will likely now request an opportunity to meet and confer prior to any termination, layoff or reorganization.