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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFF'S ASSOCIATION and NOAH FREDERITO,

Petitioner,

v.

COUNTY OF PLACER,

Respondent.

Case No.: S-CV-0047770

Petition Filed: December 21, 2021
SAP Filed: May 27, 2022

RESPONDENT COUNTY OF PLACER'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

Date: January 26, 2023
Time: 8:30 a.m.
Dept.: 3

(*Exempt from filing fees pursuant to Gov. Code, § 6103.)

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I. INTRODUCTION

Petitioners do not dispute even one of the material facts set forth in Respondent's motion for summary judgment. Instead, Petitioners present nearly a hundred "additional material facts", most of which are duplicative, contradictory, entirely immaterial, or fundamentally unsupported by the evidence cited.

In their opposition, Petitioners present several unconvincing arguments in an attempt to escape the fact that Measure F on its face would remove a mandatory subject of bargaining from the scope of representation and force the County's Board of Supervisors to implement annual salary adjustments without room for negotiation. But throughout their opposition, Petitioners make admissions that reveal the fundamental inconsistency between Measure F and the MMBA.

Petitioners also argue, unconvincingly, that Measure F was nothing more than a lawful delegation of salary-setting authority permitted by the Constitution. But their argument ignores the fact that Measure F not only delegates the Board of Supervisors' authority; it entirely deprives the Board – and all future Boards – of legislative power, which the Constitution does not permit. Petitioners' argument also does not account for the fact that since 1980 Placer County has been a charter county. By their own argument, the Constitution specifically gives the Board of Supervisors in charter counties *non*-delegable salary-setting authority. And the Court of Appeal has specifically held this authority cannot be lawfully restricted by ballot initiatives.

For the reasons set forth in Respondent's motion and below, the undisputed evidence demonstrates that Respondents are entitled to judgment as a matter of law on all causes of action.

II. ARGUMENT

A. Petitioners' Own Admissions Demonstrate That Measure F is Inconsistent With the Meyers-Milias-Brown Act

California law is unequivocal that mandatory negotiable subjects, such as wages, cannot be declared "nonnegotiable." (*Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 503-505.) For this reason, even if all other legal issues presented in the County's opening brief were set aside, the clear conflict between Measure F and the parties' rights and obligations under the MMBA is by itself entirely dispositive.

1. Measure F conflicts with the MMBA's meet and confer requirements

Petitioners argue – citing to *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 and *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 ("*Seal Beach*") – that the MMBA "does not forbid the passage of initiatives related to wages, hours, or working conditions, it merely requires the governing body and the union to meet and confer prior to placing such initiatives on the ballot." (Opposition at pp. 15-16.) This either entirely misses the point, or is deliberately intended to obfuscate the clear question at hand.

Boling and *Seal Beach* discuss the MMBA's requirements for the process by which an initiative that affects negotiable subjects can be enacted. In short, those cases hold that an agency cannot circumvent the meet-and-confer process by sponsoring a ballot initiative and taking a negotiable issue directly to the voters; instead, the agency must meet and confer with employee representatives before placing the initiative on the ballot. This is a separate issue from whether the *substance* of an initiative like Measure F impermissibly infringes on the parties' mutual right to meet and confer over subjects within the scope of representation. Neither *Boling* nor *Seal Beach* discussed the *substantive* terms of the respective ballot measures beyond concluding that they affected matters within the scope of representation.

Indeed, the very language Petitioners quote from *Seal Beach* demonstrates that the question considered there is entirely different from that presented here. In *Seal Beach*, the court considered whether "meeting and conferring on charter amendments [was] an illegal limitation on the city council's power"; it found that the council's authority to sponsor charter amendments could peacefully co-exist with the MMBA's collective bargaining process. No party is disputing that the County and PCDSA both had a right (regardless of whether they exercised it) to bargain over Measure F before it was placed on the ballot in 1976. But Petitioners misstate the law when they assert that this is *all* the law requires. *Boling* and *Seal Beach* simply have nothing to say about the *substantive* legal dispute in this case. (*People v. Strong* (2006) 138 Cal.App.4th Supp.

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1, 5 ["A case cannot be considered authority for a proposition it does not consider."].)[1]

It is indisputable that the procedures set forth in the MMBA – including the process by which salaries are fixed – are a matter of statewide concern and preempt inconsistent local procedures. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 781.) In cases where courts have assessed whether prevailing-wage statutes conflict with the MMBA, they have been careful to note that voter-enacted restrictions on the collective bargaining process are only appropriate to the extent they leave the governing body a considerable degree of discretion. For example, in *City of Fresno v. People ex rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82, the Court of Appeal upheld a prevailing-wage charter provision because it only set the City's *initial* bargaining position, noting that "[d]ifferent considerations would be involved if the charter section in question actually set wages."

Measure F actually sets wages. Specifically, it sets a formula for deputies' salaries and requires salary adjustments each year in perpetuity regardless of the status of negotiations. (Opposition at p. 14; AMF 11.) Measure F thus fundamentally changes the parties' bargaining procedure, effectively declaring salaries non-negotiable. As Petitioners admit, an enactment that "purport[s] to exclude a mandatory subject of bargaining from the MMBA's coverage" is unlawful. (Opposition at p. 17, citing *Seal Beach, supra* 36 Cal.3d at 601.)

Contrary to Petitioners' suggestions, the County is *not* arguing that the initiative process cannot coexist with the duty to bargain, nor is the County arguing that *Pacifica Firefighters Association v. City of Pacifica* overturned *Boling* or *Seal Beach*. (*See* Opposition at p. 15.) However, if the initiative process and the bargaining process are to coexist, a ballot initiative simply cannot permanently declare a mandatory subject of bargaining non-negotiable, as Measure

[1] Counsel for Petitioners peddled the conflict argument to the California Supreme Court in an unsuccessful bid to depublish *Pacifica Firefighters Association v. City of Pacifica* (2022) 76 Cal.App.5th 758, review denied (July 13, 2022). However, the Supreme Court denied the request for review and denied depublication.

Petitioners essentially argue that this Court should interpret *Boling* and *Seal Beach* as binding authority for a proposition not considered while ignoring *Pacifica* on propositions it did consider. In effect, Petitioners ask this Court to overrule or ignore *Pacifica* without legal basis, which this Court cannot do. (*Sarti v. Salt Creek Ltd.* (2008) 167 Cal.App.4th 1187, 1193 ["All trial courts are bound by all published decisions of the Court of Appeal…."].)

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F does. To uphold Measure F in the face of the MMBA's restrictions would allow the right to meet and confer to be chipped away by ballot initiatives that remove subjects from the scope of representation one by one, so long as the parties meet and confer over the initiative language first.

Petitioners' brief also argues at length that this court should make a distinction between "base salary" and "total compensation", the former being prescribed by Measure F and the latter including additional forms of compensation and benefits. (Opposition at pp. 2-5, 11, 18.) However, Petitioners do not once mention this distinction in their argument relating to the MMBA. (Opposition pp. 13-17.) Petitioner's omission here is tantamount to an admission that at least in the meet and confer context, this distinction is entirely without significance.

The MMBA, in mandatory language, imposes on public agencies a duty to meet and confer with representatives of recognized employee organizations regarding subjects within the scope of representation. (Gov. Code § 3505.) Government Code Section 3504 "defines 'scope of representation' to include 'all matters relating to employment conditions and employer-employee relations, including, but not limited to, *wages, hours, and other terms and conditions of employment … .' "* (*Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 631 [italics in court decision].) Base salary indisputably falls within this definition.

Moreover, base salary is substantively different from the other cash benefits Petitioners point out. Two of the examples listed in Petitioners' brief – longevity pay, and P.O.S.T. certificate incentives – are incentive payments for employees to obtain particular qualifications, experience, and training, that make qualifying employees' service particularly valuable to the County. The third example – nightshift differential – is additional compensation to those employees who work less favorable hours. None of these benefits, or any of the other benefits mentioned in Petitioners' statement of "Additional Material Facts" are across-the-board cash payments that categorically apply to all employees represented by the PCDSA.[2] Accordingly, the ability to negotiate these other benefits is not an equivalent substitute for the right to negotiate salary.

[2] Petitioners appear to suggest the County could work around Measure F and negotiate a universal supplement to base salary simply by "labelling" it as something other than salary. This would be little more than a transparent end-run around Measure F; if Measure F is valid, such an arrangement would not be. To the extent Petitioners are making this argument, it borders on frivolous and should be given no weight.

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It is beyond dispute that base salary by itself is a negotiable subject, even if it is only one aspect of total compensation. And as evident from the effort and expense Petitioners have undertaken in an effort to enforce Measure F – and as common sense would dictate – it is a particularly important negotiable subject. To hold otherwise would turn California labor relations upside down, and allow public agencies to make unilateral changes to salary schedules so long as unions have the opportunity to meet and confer over other aspects of compensation. This Court should decline the invitation to reach such an absurd result.

2. Measure F specifically conflicts with statutory impasse procedures

As outlined in the County's opening brief, Measure F falls squarely within the holding of the *Pacifica* decision: it is invalid because it conflicts with the statutory impasse procedures under Government Code section 3505.7. The crux of Petitioners' rebuttal is that *Pacifica* can be distinguished because Measure F does not *expressly* alter the factfinding process. But the undisputed facts Petitioners cite to make that argument expose the truth of the matter: that Measure F presents an even bigger conflict with the MMBA than the initiative in *Pacifica* did.

Petitioners assert that Pacifica's initiative "only" required it to impose a specific minimum salary after factfinding if the parties failed to reach an agreement, whereas Measure F requires salary adjustments every February, "regardless of the status of negotiations." (Opposition at pp. 13-14; AMF 11.) In other words, Measure F would require imposing a specific non-negotiable base salary every single year, regardless of whether the parties are mid-contract, in the process of negating a new contract, or have already concluded factfinding. This fact does not bring this case outside the scope of the *Pacifica* decision; it makes the conflict significantly worse by completely eliminating a mandatory subject of bargaining without *any* room for deviation, whether by negotiation, actual negotiated agreement, or (as in *Pacifica*) imposition of a last, best, and final offer. If accepted, Petitioners' argument would result in a bizarre reverse preemption of the MMBA under which a measure that restricts *one part* of the bargaining process is unlawful (*Pacifica*), but a measure that purports to restrict *the entire* salary bargaining process is somehow lawful. This piecemeal attack on *Pacifica* is nonsense that essentially asks this Court to ignore

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how Measure F operates in practice, to disregard the entire bargaining process and its goals, and to nullify the analysis and rationale underpinning the Court of Appeal's decision.

The bargaining history in this case is nearly identical to that in *Pacifica*: The parties met and conferred over a new memorandum of understanding; the County offered a salary increase inconsistent with Measure F; the parties engaged in factfinding; after factfinding the Board enacted wage increases consistent with its bargaining proposal; and Petitioners sued to enforce Measure F and invalidate the salary increase. And just like in *Pacifica*, enforcing Measure F would prevent the County from imposing its last, best, and final offer in the event of an impasse in negotiations. While Measure F does not specifically say that the County cannot impose its last, best, and final offer, the undisputed facts show that enforcing Measure F would have exactly that effect. Otherwise this action would not exist. Measure F creates the exact same infirmity that invalidated the measure at issue in *Pacifica.* The fact that Measure F would *also* force the County to impose salary increases without bargaining in other situations does not change this conclusion, and Petitioners' attempts to distinguish *Pacifica* are unpersuasive.

Petitioner's citation to *Kugler v. Yocum* (1968) 69 Cal.2d 371, on this issue is entirely irrelevant. *Kugler* considered only whether a salary-setting initiative would be an unlawful delegation of the city council's authority under the City Charter; it never considered whether the initiative conflicted with the MMBA. Indeed, the *Kugler* decision was issued in 1968, the same year as when the MMBA was enacted; and the proposed ballot initiative, if approved, would have taken effect years earlier in January 1965. Accordingly, the MMBA did not even apply at the time of the events underlying the *Kugler* decision; Petitioners cannot rely on *Kugler* to support their argument that Measure F's mandatory and non-negotiable salary formula is consistent with the MMBA requirement to negotiate salary changes. (*People v. Strong* (2006) 138 Cal.App.4th Supp. 1, 5 ["A case cannot be considered authority for a proposition it does not consider."].)

B. Measure F Was Not a Lawful Delegation Because It Permanently Deprives the Board of Legislative Power and Forces Specific Action by Future Boards

Petitioners argue at length that Measure F is consistent with the Constitution's grant of salary-setting authority to the Board of Supervisors in Article XI, section 1, and the equivalent

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statutory grant of authority in Government Code section 25300, on the grounds that both use the term "provide for" (rather than "fix" or "prescribe") to describe the Board's authority and thus – Petitioners argue – the Board's salary-setting function can legally be delegated to others. (Opposition at pp. 9-10, citing *County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665.)[3]

This argument entirely misses the point. Whether or not the Board of Supervisors in 1976 could have delegated *its own* salary-setting function, Measure F was not a lawful delegation of authority because it would bind the County *in perpetuity*, depriving the Board, and future Boards, of their constitutional and statutory salary-setting authority. It is a longstanding principle of municipal law that a legislative board cannot divest itself or future boards of the power to enact legislation within its competence. (*City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 929.) Petitioners cite no authority for the proposition that the electorate can divest the Board of power where the Board itself cannot.[4] By forcing future Boards to enact salary adjustments each year according to a set formula with no room for discretion, Measure F would do just that.

California courts have repeatedly distinguished between prevailing-wage provisions that require wages identical to or "not higher than" the prevailing wage – which are invalid – and those that only require "a reasonable or just correspondence" with the prevailing wage. (*City and County of San Francisco v. Boyd* (1943) 22 Cal.2d 685, 690. See also *Walker v. Los Angeles County* (1961) 55 Cal.2d 626, 634 [noting that " 'regulation' of the board of supervisors in the performance of its duty in fixing salaries is wholly distinguishable from cases … where the charter provision entirely takes away or completely usurps the board's duty."; *Carrier v. Robbins* (1952) 112 Cal.App.2d 32, 35.) Again, Measure F would require the Board – and every future Board – to enact specific annual salary adjustments set by a formula, with no room for discretion.

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[3] As discussed below, even if the Court were inclined to accept this argument, the delegation would then run afoul of Article XI, section 4(f), of the Constitution.

[4] Petitioners cite the Supreme Court's decisions in *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, and *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118. But both of those cases considered only whether submitting negotiable issues to binding arbitration unconstitutionally vested the arbitrator with legislative power; neither addressed circumstances where a local public agency's legislative body would be entirely divested of authority over an issue and forced to take specific action each year in perpetuity.

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By its terms, Measure F not only delegates the Board's authority to set compensation for the Sheriff's Department; rather, it entirely divests the Board of this authority in perpetuity. Thus, even if the Board's salary-setting function under general law might be delegable, Measure F specifically was not a proper and valid delegation.

C. Even If Measure F Were Valid in 1976, It Was Legally Superseded When Placer County Adopted a County Charter in 1980

Even assuming, for the sake of argument, that Measure F was a valid delegation of the Board of Supervisors' authority when it was enacted in 1976, it does not follow that its provisions were still enforceable in 2021 when the Board of Supervisors enacted the challenged ordinances. To the contrary, when the voters of Placer County enacted the County Charter in 1980, the constitutional framework surrounding charter counties superseded the general law, and the Charter itself superseded the inconsistent provisions of Measure F.

Under Section 102, the Charter granted the County all legal authority and powers "which are now or may hereafter be provided by the Constitution and the laws of the State of California and by this Charter." (UMF 43.) The following provision, Section 103, then provides that "The powers mentioned in the preceding section *shall be exercised only by a Board of Supervisors* or though agents and officers acting under its authority or authority conferred by law." (UMF 44.) Section 301 of the Charter re-emphasizes the Charter's grant of power specifically to the Board, providing that "*The Board* shall have all the jurisdiction and authority which now or which may hereafter be granted by the Constitution and the laws of the State of California or by this Charter." (UMF 46 (emphasis added).) The clear intent of this language – especially in light of Section 103's specific restriction that authority be exercised only by the Board or its authorized agent – was to return *to the Board* all authority that the Constitution, general law, or the Charter would allow the Board to wield. This broad reclaiming of authority necessarily includes the salary-setting authority granted by the Constitution and Government Code section 25300; indeed Charter Section 302 specifically mirrors that grant of authority. (UMF 47.) Accordingly, *even if* Measure F was a valid delegation of legislative authority in 1976 – which the County disputes – it

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is clear from the voter-approved language in the above-cited provisions that the County Charter *revoked* that delegation and restored to the Board the full scope of authority authorized by law.

Indeed, the provisions of the California Constitution that govern charter counties make this conclusion inescapable. The "provide for" language that Petitioners argue allows for delegation appears in Article XI, Section 1(b), which outlined the County's authority *as a general law county* (including in 1976 when Measure F was enacted). But ever since the voters approved the Charter, the County's authority has instead derived from Article XI, Section 4, which "expressly reserves for the 'governing bodies' of charter counties the authority to set the number of county employees, their duties, and their compensation." (*Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 39 ("*Gates*".)[5] Under Article XI, Section 4, county charters shall provide for "[t]he fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons." (Cal. Const., art. XI, § 4, subd. (f).) Under Petitioners' own argument, the power to "fix" and "prescribe" compensation in charter counties belongs to the Board and is non-delegable. (See Opposition at p. 10; *County of Madera*, *supra*, 39 Cal.App.3d at 669.) In other words, if the Court were to accept Petitioner's arguments with respect to the general law provision, it must then find for the County under the charter provision. The Board's authority is inescapable.

Indeed, in *Gates*, the Court of Appeal *specifically* held that initiatives that would "place limits on the board of supervisors' authority to set the compensation of certain County employees" in a charter county would impermissibly "infringe on authority exclusively delegated to the board of supervisors by the California Constitution, so they are invalid." (*Ibid.*) Measure F not only limits the Board's authority to set employee compensation; it ties the Board's hands.

To the extent Petitioners argue that the Board somehow "ratified" Measure F or its salary-setting formula after 1980, that argument is a complete red herring and irrelevant to Petitioner's

[5] The *Gates* decision is not an outlier here; it follows a long history of decisions holding that the Constitution mandates that the Board of Supervisors of a charter county alone hold the power to prescribe employee compensation. (*Jones v. De Shields* (1921) 187 Cal. 331, 339; *McPherson v. Richards* (1933) 134 Cal.App. 462, 464-466; *Morton v. Richards* (1933) 134 Cal.App. 665, 668.)

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claim that the County violated Elections Code section 9125 and their derivative claim that the County violated the now-repealed County Code Section 3.12.040. There is no dispute that since 1976 the voters of Placer County have never affirmatively re-enacted Measure F, and under the *Gates* decision any attempt to do so after 1980 would be invalid.[6] To the extent the Board enacted ordinances or resolutions that mirror Measure F, any such enactments were necessarily nothing more than ordinary legislative action by the Board, which cannot bind future Boards, and which would be subject to repeal or amendment by a normal majority vote without voter approval.

To the extent Measure F may have been a valid delegation of authority in 1976, that delegation was revoked and superseded – with voter approval – by the enactment of the County Charter in 1980. The *Gates* decision is directly on point and dispositive here: Measure F limits the Board's authority to set the compensation of certain County employees, infringing on authority exclusively delegated to the Board by the Constitution; and so it is invalid. Thus, independent of any constitutional or statutory conflict that may have applied when Placer County was a general law county in 1976, the law is clear that Measure F *could not* have survived the voter-approved enactment of the County Charter in 1980. It follows that Petitioners claim that amending County Code section 3.12.040 violated Elections Code section 9125, and their claim that the County violated former Section 3.12.040, both fail as a matter of law.

III. CONCLUSION

In its opening brief, the County outlined multiple separate legal theories by which this Court can and should find that Measure F was not a valid and enforceable ballot initiative, at least not by the time the County's Board of Supervisors enacted the two ordinances being challenged in this action. Each and all of those legal theories stand independently, and each one of them necessarily points to the same conclusion: The Board's act to amend Section 3.12.040 of the County Code was valid, as were the Board's subsequent salary increases, and the County is entitled to summary judgment.

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[6] Petitioners make much of the failed attempts to repeal Section 3.12.040 in 2002 and 2006. But a *failed* ballot measure by definition has *no legal effect*. And *even if* those measures were equivalent to affirmative initiatives re-enacting Measure F, they would still run afoul of *Gates*.

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Dated: January 20, 2023

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I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: **401 West A Street, Suite 1675, San Diego, California 92101.**

On **January 20, 2023**, I served the foregoing document(s) described as **RESPONDENT COUNTY OF PLACER'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION** in the manner checked below on all interested parties in this action addressed as follows:

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☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from cmcardle@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **January 20, 2023**, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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