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140 Cal.Rptr. 675

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LONG BEACH CITY EMPLOYEES ASSOCIATION, INC., Plaintiff and Appellant,

v.

CITY OF LONG BEACH et al., Defendants and Respondents

Civ. No. 50652.

Court of Appeal, Second District, Division 2, California.

August 15, 1977.

SUMMARY

By petition for writ of mandate, a public employee organization sought to compel a city council to adopt a memorandum of understanding prepared, pursuant to [Gov. Code, § 3505.1](#), by representatives of both parties on the subject of wages and working conditions. The petition admitted that the council had met and conferred in good faith with the organization, but pleaded, as conclusions of law, bad faith based solely on the part of the city manager advising the city council that approval of the memorandum was within its legislative discretion and on the part of the council in refusing to adopt it. The city council's general demurrer was sustained without leave to amend, and the petition was dismissed with prejudice. (Superior Court of Los Angeles County, No. SOC 44269, Hampton Hutton, Judge.)

The Court of Appeal affirmed, quoting a statement by the Supreme Court that, although there is provision in the Meyers-Milias-Brown Act ([Gov. Code, § 3500](#) et seq.) for a written memorandum of understanding by employee organizations and representatives of a negotiating public agency, the act expressly provides that the memorandum "shall not be binding" but shall be presented to the governing body of the agency or its statutory representative for determination, thus reflecting the legislative *274 decision that the ultimate determination is to be made by the governing body itself or its statutory representative, and not by others ([Gov. Code, § 3505.1](#)). Thus, in the instant case, the employee organization's pleaded conclusions of bad faith, unsupported by anything in the record, were contrary to the law. (Opinion by Roth, P. J., with Compton and Beach, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Labor § 37--Labor Unions--Collective Bargaining--Public Employees-- Memorandum of Understanding--Meyers-Milias-Brown Act.

A petition for writ of mandate, in which a public employee organization sought to compel a city council to adopt a memorandum of understanding prepared, pursuant to Gov. Code, § 3505.1, by representatives of both parties on the subject of wages and working conditions, was properly dismissed on the city council's demurrer, where the only support for the petition, which admitted that the council had met and conferred in good faith with the organization, consisted of conclusionary pleadings of bad faith based solely on the facts that the council had refused to adopt the memorandum and that the city manager had advised the council that approval of the memorandum was within its legislative discretion. Such pleaded conclusions, in the absence of anything remotely suggesting bad faith in the supporting affidavits filed by the organization, in the minutes of the city council, or elsewhere in the record, were clearly contrary to the law as expressed in the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

[See Cal.Jur.2d, Public Officers, § 240; Am.Jur.2d, Labor and Labor Relations, § 1195.]

COUNSEL

Geffner & Satzman and Michael Posner for Plaintiff and Appellant. *275

Leonard Putnam, City Attorney, and John R. Calhoun, Deputy City Attorney, for Defendants and Respondents.

ROTH, P. J.

The Long Beach City Employees Association, Inc. (CEA) petitioned the superior court for a peremptory writ of mandate to compel the Long Beach City Council (City Council or respondent) to adopt a memorandum of understanding (MOU) prepared by representatives of CEA and City of Long Beach pursuant to [Government Code section 3505.1](#), part of the Meyers-Milias-Brown Act (MMBA), and presented to the City Council for adoption.

CEA's petition alleged in pertinent part:

"On August 30, 1976, Calvin A. Davenport and Bruce E. Dandy, representatives of the CEA in good faith executed a Memorandum of Understanding by and between The City Employees Association (CEA) and The City Of Long Beach that was signed by Robert C. Creighton, acting City Manager for the City Of Long Beach. ...

"Pursuant to Article I of ..., the [MOU] would not be effective until provisions of such are approved by the City Council.

"At all times herein relevant, [Section 3505.1 of the Government Code](#) provides: 'If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding and present it to the governing body or its statutory representative for determination.'

"On August 31, 1976, Bruce Dandy, Acting General Manager of the CEA appeared before respondent City Council to request respondent City Council to approve the [MOU]. ... At that time, Barney J. Walczak, Deputy City Manager, who was the chief negotiator for the city, in bad faith advised respondent City Council that notwithstanding the provisions of Article I of the [MOU] that required said document to be approved by the City Council, he advised the council that they did *276 not have to approve. ... Thereafter, respondent City Council did not approve. ...

"On September 7, 1976, Bruce Dandy, Acting General Manager of the CEA, appeared before ... City Council to urge the adoption of the [MOU]. ... On that date, ... City Council in bad faith refused to adopt the [MOU] ... [and avoided] ... the obligation of being bound to a contract with petitioner.

"The action taken by ... City Council on September 7, 1976, in refusing to adopt the [MOU], is in violation of [Section 3500 et seq. of the Government Code](#), and respondents should be ordered to adopt the Memorandum of Understanding." (Italics added.)

The facts above alleged, except for the underscored conclusion of law, are not in dispute. In order to fortify its allegation of bad faith in its petition CEA filed affidavits which incorporated the minutes of two meetings of the City Council which showed that there were many meetings between CEA and the representatives of City Council discussing all facets of the MOU. However, the good faith of respondent with respect to attendance and decision of all items involved therein is not in question. The record shows that the MOU was meticulously and carefully considered by City Council from the time of its original submission and that the

City Council did adopt Salary Resolutions as provided in the MOU and thereafter at CEA's request, the MOU in its entirety was read into the minutes of the City Council with the proviso that subsequent approval of its minutes by the council was not to constitute an adoption of the MOU.

(1) Nothing in the affidavits filed by petitioner or in the minutes of City Council or otherwise in the record remotely suggests bad faith. And nothing is pointed out by petitioner to show bad faith other than the pleaded conclusion of bad faith and the fact above noted that respondent was advised by its city manager that approval of the MOU was within its legislative discretion. MMBA ([Gov. Code, §§ 3500-3510](#)) applies to employees and employee organizations and its purpose as recited in [section 3500](#) is in part to *277 provide a "reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations." In aid of this objective, section 3505 provides that the "governing body of a public agency ... shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations ... and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. ... 'Meet and confer in good faith' means that a public agency ... and representatives of recognized employee organizations shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. ..." Appellant's petition admits that the MOU itself recites, and the applicable law provides, that an MOU is not effective until approved by respondent and that respondent did meet and confer in good faith with the CEA as required by [sections 3505](#) and [3505.1 of the Government Code](#), but petitioner nevertheless now contends that although respondent did meet with the CEA pursuant to [Government Code section 3505](#), the fact that respondent did not adopt the MOU signed by its city manager was bad faith per se.

The law is clearly to the contrary.

When respondent was advised by its assistant city manager that the MOU was not binding upon City Council, the advice stated the law as understood and pleaded by CEA as it is set forth in [section 3505.1 of the Government Code](#) and as interpreted and approved by our Supreme Court. (*Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22 [132 Cal.Rptr. 668, 553 P.2d 1140].) To hold that a refusal to adopt an MOU after legislative consideration, which consideration is not remotely impeached, would be to nullify the law.

In *Bagley*, the court says at page 25: "The Meyers-Milias-Brown Act ([Gov. Code, §§ 3500-3510](#)), which applies to local government employees *278 and deals with public employee organizations and labor relations, seeks to provide 'a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.' ([Gov. Code, § 3500.](#)) Although there is provision for a written memorandum of understanding by employee organizations and representatives of a negotiating public agency, the act expressly provides that the memorandum 'shall not be binding' but shall be presented to the governing body of the agency or its statutory representative for determination, thus reflecting the legislative decision that the ultimate determinations are to be made by the governing body itself or its statutory representative and not by others. ([Gov. Code, § 3505.1](#); see *City and County of San Francisco*

v. Cooper, supra, [13 Cal.3d 898, 926-928](#) [under the Winton Act involving school labor relations, written memorandum of understanding is not binding, the school board retaining ultimate authority]." (Italics added.) ([Glendale City Employees' Assn., Inc. v. City of Glendale \(1975\) 15 Cal.3d 328 \[124 Cal.Rptr. 513, 540 P.2d 609\]](#); [Crowley v. City and County of San Francisco \(1977\) 64 Cal.App.3d 450, 456 \[134 Cal.Rptr. 533\]](#).)

After a brief hearing on the petition as fortified by the affidavits above referred to, the superior court sustained respondent's general demurrer to the petition without leave to amend and denied the petition. CEA appeals from the judgment sustaining City Council's general demurrer to the petition and from the order denying relief and dismissing the petition with prejudice.

The judgment is affirmed in all respects.

Compton, J., and Beach, J., concurred.

Appellant's petition for a hearing by the Supreme Court was denied October 13, 1977. *279 Cal.App.2.Dist.,1977.

Long Beach City Emp. Ass'n, Inc. v. City of Long Beach
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