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LOS ANGELES COUNTY FEDERATION OF LABOR, AFL-CIO et al., Plaintiffs and
Respondents,

v.

COUNTY OF LOS ANGELES et al., Defendants and Appellants; LOS ANGELES COUNTY
PROFESSIONAL PEACE OFFICERS ASSOCIATION et al., Interveners and Respondents.

No. B002356.

Court of Appeal, Second District, Division 4, California.

May 29, 1984.

SUMMARY

A labor union challenged a county charter amendment which prohibited the county board of supervisors from granting improvements in wages, hours, or working conditions to county employees represented by any union involved in a strike against the county until the next regularly scheduled 'meet and confer' negotiations. The amendment also provided for discipline of any county employee who 'instigates, participates in, or affords leadership to a strike.' Despite the existence of a severability clause in the amendment, the trial court granted a peremptory writ of mandate enjoining enforcement of the entire amendment. (Superior Court of Los Angeles County, No. C-435415, Leon Savitch, Judge.)

The Court of Appeal affirmed, holding that the 'meet and confer' provisions of the Meyers-Milias-Brown Act ([Gov. Code, § 3500](#) et seq.) preempted any limitation on meeting and conferring with a recognized employee union, regardless of any strike. It also held that the disciplinary provisions were too broad to be enforceable, and cast a chilling effect on the right of all employees to discuss, even privately, their employment conditions. The court held that the invalid portions of the amendment so permeated it that merely to excise them would leave the amendment unintelligible. (Opinion by Kingsley, Acting P. J., with McClosky, J., and Rudof, J., [FN*] concurring.) *906

FN* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Labor § 47--Labor Disputes--Strikes Against Public Entity--State 'Meet and Confer' Statutes--Preemption of Local Legislation.

A county charter provision prohibiting the county board of supervisors from granting improvements in wages, hours, or working conditions to county employees represented by a union involved in a strike against the county until the next regularly scheduled 'meet and confer' negotiations, was invalid, and the trial court properly enjoined its enforcement. The 'meet and confer' provisions of the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) preempted any limitation on meeting and conferring with a recognized employee union, regardless of any strike.

[See Cal.Jur.3d, Public Officers and Employees, § 185; [Am.Jur.2d, Labor and Labor Relations, § 1764.](#)]

(2) Labor § 47--Labor Disputes--Strikes Against Public Entity--Local Legislation--Overbreadth.

A county charter amendment providing for discipline of any county employee who 'instigates, participates in, or affords leadership to a strike' was too broad to be enforceable and the trial court properly enjoined its enforcement. The amendment did not define or illustrate 'instigates' or 'participates.' The possibility of being discharged for merely suggesting a strike cast a chilling effect on the right of all employees to discuss, even privately, their employment conditions. The interpretation that merely staying away from work or 'slowing down' was 'participation' was also too broad and unduly chilling. Further, the amendment required employees to agree that they could lawfully be discharged pursuant to invalid portions thereof.

(3) Municipalities § 57--Ordinances, Bylaws, and Resolutions--Partial Invalidity--County Charter Amendment.

In an action by a labor union challenging a county charter amendment which sought to prohibit the county from granting improvements in wages, hours, or working conditions to county employees represented by a union involved in a strike against the county until the next regularly scheduled 'meet and confer' negotiations, and which sought to provide for discipline of any county employee who 'instigates, participates in, or affords leadership to a strike,' the trial court properly enjoined enforcement of the entire amendment. The limitation on meeting and conferring and the disciplinary provisions were invalid, and although the amendment contained a severability clause, the invalid portions so permeated the amendment that merely to excise them would have left the amendment unintelligible.

COUNSEL

De Witt W. Clinton, County Counsel, Donald K. Byrne, Chief Deputy County Counsel, and William F. Stewart, Assistant County Counsel, for Defendants and Appellants.

Goldstein, Freedman & Klepetar, Charles H. Goldstein and James E. Hall as Amici Curiae on behalf of Defendants and Appellants.

Fogel, Rothschild, Feldman & Ostrov, Daniel Fogel, Lester G. Ostrov and Mary Luppi Basich for Plaintiffs and Respondents and for Interveners and Respondents.

KINGSLEY, Acting P. J.

In 1982, the voters of the County of Los Angeles adopted a charter amendment, including in the county charter, section 47.5 to article X, entitled 'Discharge of Striking Employees.' [FN1] The trial court granted a peremptory writ of mandate enjoining enforcement of that section, based on its findings that the section was preempted by state legislation and was unconstitutional on its face. Although we do not, as we explain hereinafter, totally agree with all of the reasoning of the trial court, we affirm the judgment, concluding that one subdivision of the section is preempted by state law, that other provisions of the section are unconstitutional and that, although the section contains a severability clause, the invalid provisions so permeate the section as adopted as to make any partial application impossible.

FN1 The full text of that new section is set forth in the appendix to this opinion.

Subdivision (i) of the section provides as follows: '(i) In the event that an employee organization has instigated, participated in or afforded leadership to a strike against the County of Los Angeles, or any of its departments, commissions or agencies: or to any concerted action to withhold service therefrom: the Board of Supervisors of the County of Los Angeles is hereby prohibited from granting any improvement of wages, hours, or working conditions to employees represented by that organization beyond those in effect or last offered by the County prior to the commencement of such strike or concerted activity, until the commencement of the meet and confer negotiations for the next bargaining year at a time regularly scheduled *908 for commencement under County policy and provisions governing such negotiations. This remedy shall not preclude the County of Los Angeles from securing any other equitable or legal relief to which it may be entitled under state-law.' (1) A similar limitation was considered by the Supreme Court in [International Brotherhood of Electrical Workers v. City of Gridley \(1983\) 34 Cal.3d 191 \[193 Cal.Rptr. 518, 666 P.2d 960\]](#). That case held that the 'meet and confer' provisions of the Meyers-Milias-Brown Act ([Gov. Code, § 3500](#) et seq.) preempted any limitation on meeting and conferring with a recognized employee union, strike or no strike. It follows that subdivision (i) is invalid and its enforcement properly enjoined.

II

(2) The disciplinary provisions of section 47.5 apply to 'any employee who instigates, participates in or affords leadership to a strike.' We agree with the trial court that, insofar as it deals with employees who 'instigate' or 'participate' in a strike, the language is too broad to be enforceable.

(1) We are given no definition or illustration of 'instigates.' Does it cover an employee, who, in conversation with a coemployee, discussing a union demand for some benefit in the next contract, remarks: 'If we don't get it we should strike.' The possibility that, if a strike should ultimately, weeks later, occur, that employee (who in the end did not strike) might be discharged casts a 'chilling effect' on the right of all employees to discuss, even privately, their employment conditions.

(2) Similarly, we are given no definition of 'participates,' although subdivision (e) of the section (which we discuss later) seems to indicate that merely staying away from work or 'slowing down' is 'participation.' Such an interpretation is also too broad and unduly 'chilling.' We know, from long history of labor relations, that an employee who does not join in a strike by refraining from work-a 'scab'-is subject not only to ostracism by fellow employees but to risk of actual physical harm. Once a strike begins, any employee, even though personally opposed to striking, may, for his own well-being, 'join' in the strike.

(3) Under subdivision (e) of the section, mere absence from work while a strike is ongoing raises a 'rebuttable' presumption that the employee is 'engaged in' that strike. Clearly, an employee may-strike or no strike-have personal reasons for being absent. Absent this 'presumption' he risks some form of discipline-normally a deduction in pay-unless he goes to the expense of securing indisputable evidence of his excuse, but he is not subjected to peremptory discharge because a hearing officer rejects his bare word as to the cause. *909

(4) Subdivision (h) of the section provides as follows: '(h) Every employee of the County of Los Angeles, whether employed on the effective date of this Section or thereafter employed, shall be furnished a copy of the provisions of this Section and shall acknowledge receipt thereof by executing the following statement which shall be filed with the office of the Civil Service Commission:

"I hereby acknowledge receipt of a copy of the provisions of Section 47.5 of the Charter of the County of Los Angeles and agree that I understand that during my term of employment with the County, I shall neither instigate, participate in, or afford leadership to a strike against the County of Los Angeles, or any of its departments or agencies, or engage in any concerted action to withhold my services from the County of Los Angeles, or any of its departments or agencies.

"I further understand that if I instigate, participate in or afford leadership to such a strike or engage in any such concerted action I shall be subject to discharge and shall not be reemployed by the County; except that I may apply to return to County service as a new employee and may be employed in accordance with the regular employment practices of the County in effect at that time for the position which I seek.

"Furthermore, I understand that I will be rebuttably presumed to have engaged in such a strike or other prohibited concerted action against the County of Los Angeles, its commissions, departments and agencies, if I am absent from work without permission or if I abstain wholly or in part from the full performance of my duties in the normal manner without permission from the appropriate appointing authority on the date or dates when a strike or other form of concerted action to withhold services from said County, or any of its commissions, departments or agencies occurs.

"I further understand that no officer, board, commissioner or appointing authority of the County, elected or appointed, shall have the power to grant amnesty to any person who violates the prohibition in Section 47.5 of the Charter against instigating, participating in, or affording leadership to a strike against the County, or engaging in any concerted action to withhold services from the County, or any of its departments, commissions or agencies." Insofar as that subdivision provides for service of a copy of the section on each employee and his written acknowledgment of such service, we see nothing objectionable. However, the 'acknowledgment' set forth in the subdivision goes beyond a mere acknowledgment that the employee knows that the section exists, but requires the employee to agree that he may lawfully be discharged pursuant to portions of the section which we here hold are invalid! While the form is not an 'oath,' still, by virtue of its overbreadth, is a violation of the rights we have discussed above. *910

III

(3) The section does, as the respondents point out, contain a severability clause. From that, they argue that an injunction preventing enforcement of the section in its entirety is in error but that, at most, only the invalid portions should be covered. However, the portions that we find invalid so permeate the section that, merely to excise them, would leave a section unintelligible. We do not rewrite legislation. Insofar as any of the objectives of section 47.5 can validly be secured by legislation, the obligation is on those seeking such valid legislation to draft and submit it to the voters.

IV

Because the injunction must, for the reasons above set forth, be affirmed, we do not express any opinion on the validity of strikes by public employees or, if strikes are illegal, on what remedies a public agency may validly invoke such strikers or their unions. The judgment is affirmed.

McClosky, J., and Rudof, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

Appellants' petition for a hearing by the Supreme Court was denied August 23, 1984.

Exhibit A

Charter Amendment A

Section 47.5 is added to Article X of the Charter of the County of Los Angeles to read as follows: Section 47.5-Discharge of Striking Employees.

(a) No employee of the County of Los Angeles shall instigate, participate in, or afford leadership to a strike against the County of Los Angeles, or engage in any form of concerted action to withhold service from said County, or any of its departments, commissions or agencies.

(b) A strike or concerted action to withhold services from said County, or any of its departments, commissions or agencies shall be defined as the failure of any employee or group of employees to report for duty, the absence of an employee or group of employees from duty, the stoppage of work or the abstinence in whole or in part from full, faithful and proper performance of the duties of employment, for the purposes of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment or of intimidating, coercing or unlawfully influencing others not to remain in or assume public employment; provided, however, that nothing herein shall limit or impair *911 the right of any employee or group of employees to express or communicate a complaint or opinion on any matter related to conditions of public employment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of public employment.

(c) Any employee of the County of Los Angeles who instigates, participates in or affords leadership to a strike against the County of Los Angeles or any of its departments, commissions or agencies, or engages in any form of concerted action to withhold services therefrom shall be subject to discharge from County service and said person shall not be reinstated or returned to the employ of the County of Los Angeles: except that the employee may apply to return to County service as a new employee and may be employed in accordance with the regular employment practices of the County in effect at the time for the position sought.

(d) In the event of any such strike or concerted action, it shall be the duty of the Chief Administrative Officer or appropriate appointing authority to identify any employee of the County under his jurisdiction who is in violation of the provisions of this Section, and to initiate discharge proceedings against such employee in accordance with the applicable provisions of this Charter. Prior to initiating such a discharge proceeding, the Chief Administrative Officer or appropriate appointing authority shall provide notice to the employee of the charges against the employee and shall provide the employee with a timely opportunity to respond thereto. If the Chief Administrative Officer, or other appropriate appointing authority, after completing an investigation, determines that the charges are supported by the evidence submitted, and that the employee instigated, participated in, or afforded leadership to a strike against the County of Los Angeles or any of its departments, commissions or agencies, or engaged in any form of concerted action to withhold services therefrom, said appointing

authority shall discharge the employee involved, and said person shall not be reinstated or returned to the employment of the County of Los Angeles; except as stated in paragraph (c) of this Section.

(e) In determining whether an employee engaged in a strike or in any form of concerted action to withhold service from said County or any of its departments, commissions or agencies, the Chief Administrative Officer or appropriate appointing authority shall use the following presumption which is rebuttable: Any employee who is absent from work without permission or who abstains wholly or in part from the full performance of the employee's duties in the employee's normal manner without permission, on the date or dates when a strike or concerted action to withhold services occurs, shall be presumed to have engaged in such strike or in concerted action to withhold services on such date or dates.

(f) A discharge imposed pursuant to this Section shall be appealable to the Civil Service Commission. However, notwithstanding other provisions of this Charter, in deciding whether the discharge of an employee for violating the provisions of this Section is proper, the Civil Service Commission shall be bound by the presumption stated in paragraph (e) of this Section. If, in the opinion of the Civil Service Commission, this presumption is not rebutted by a preponderance of the probative evidence, the Civil Service Commission shall sustain the discharge of the employee, and the County shall not be required to reinstate the employee.

(g) No officer, board, commissioner, appointing authority, or other agent of the County, elected or appointed, shall have the power to grant amnesty and/or to waive any of the provisions of this Section, and/or to authorize, appease, condone or consent to any employee's instigating, participating in, or affording leadership to a strike against the County of Los Angeles or any of its departments, commissions or agencies, or engaging in any form of concerted action to withhold services therefrom. No person exercising any authority, supervision or direction over the County of Los Angeles, or any of its boards, commissions or agencies shall have the power to authorize, approve, condone or consent to a strike or other concerted activity prohibited by this Section; and no such person shall authorize, approve, condone or consent to such strike or other concerted activity prohibited by this Section.

(h) Every employee of the County of Los Angeles, whether employed on the effective date of this Section or thereafter employed, shall be furnished a copy of the provisions of this Section and shall acknowledge receipt thereof by executing the following statement *912 which shall be filed with the office of the Civil Service Commission:

'I hereby acknowledge receipt of a copy of the provisions of Section 47.5 of the Charter of the County of Los Angeles and agree that I understand that during my term of employment with the County, I shall neither instigate, participate in, or afford leadership to a strike against the County of Los Angeles, or any of its departments or agencies, or engage in any concerted action to withhold my services from the County of Los Angeles, or any of its departments or agencies.

'I further understand that if I instigate, participate in or afford leadership to such a strike or engage in any such concerted action I shall be subject to discharge and shall not be reemployed by the County; except that I may apply to return to County service as a new employee and may be employed in accordance with the regular employment practices of the County in effect at that time for the position which I seek.

'Furthermore, I understand that I will be rebuttably presumed to have engaged in such a strike or other prohibited concerted action against the County of Los Angeles, its commissions, departments and agencies, if I am absent from work without permission or if I abstain wholly

or in part from the full performance of my duties in the normal manner without permission from the appropriate appointing authority on the date or dates when a strike or other form of concerted action to withhold services from said County, or any of its commissions, departments or agencies occurs.

'I further understand that no officer, board, commissioner or appointing authority of the County, elected or appointed, shall have the power to grant amnesty to any person who violates the prohibition in Section 47.5 of the Charter against instigating, participating in, or affording leadership to a strike against the County, or engaging in any concerted action to withhold services from the County, or any of its departments, commissions or agencies.'

(i) In the event that an employee organization has instigated, participated in or afforded leadership to a strike against the County of Los Angeles, or any of its departments, commissions or agencies; or to any concerted action to withhold service therefrom; the Board of Supervisors of the County of Los Angeles is hereby prohibited from granting any improvement of wages, hours, or working conditions to employees represented by that organization beyond those in effect or last offered by the County prior to the commencement of such strike or concerted activity, until the commencement of the meet and confer negotiations for the next bargaining year at a time regularly scheduled for commencement under County policy and provisions governing such negotiations. This remedy shall not preclude the County of Los Angeles from securing any other equitable or legal relief to which it may be entitled under state law.

(j) If any provisions of this Section 47.5 or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provisions or application; and to this end the provisions of this Section are severable. *913

Cal.App.2.Dist.,1984.

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END OF DOCUMENT

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