

(Cite as: 43 Cal.Rptr.2d 421)

150 L.R.R.M. (BNA) 2023, 95 Cal. Daily Op. Serv. 6080, 95 Daily Journal D.A.R. 10,365

Ordered Not Published

Previously published at: 37 Cal.App.4th 283

(Cal. Rules of Court, Rules 976, 977, 979)

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Union representing city police officers filed petition for peremptory writ of mandate seeking declaration whether setting and adjusting of retirement and death allowances for city safety employees was subject to negotiation and arbitration after ballot measure was added to city charter. The Superior Court, San Francisco County, No. 951073, Stuart R. Pollak, J., entered judgment for union, and city appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding opinion of the Court of Appeal, and retransferred for reconsideration. The Court of Appeal, Peterson, P.J., held that: (1) ballot measure did not divest city's electorate of its power to set formulae for retirement and death allowances of city safety employees and vested it in panel of arbitrators if city and union reached impasse in negotiations, and (2) the Meyers-Milias-Brown Act (MMBA) did not preempt reserved power to set formulae, constitutionally vested in city voters by charter.

Reversed and remanded with instructions.

Opinion, [34 Cal.Rptr.2d 830](#), vacated.

*422 Louise H. Renne, San Francisco City Atty., [Dennis Aftergut](#), Chief Asst. City Atty., San Francisco, for appellant.

[Duane W. Reno](#), [Vincent J. Courtney, Jr.](#), [Sylvia Courtney](#), Russell L. Boltwood, Davis, Reno & Courtney, San Francisco, for respondent.

PETERSON, Presiding Justice.

San Francisco Police Officers' Association, Local 911, Service Employees International Union, AFL-CIO (Union) filed a petition for peremptory writ of mandate in the lower court on April 15, 1993. The petition required interpretation of a 1990 ballot measure (Proposition D) adding sections 8.590-1 through 8.590-7 to the Charter of the City and County of San Francisco [\[FN1\]](#) (City). The parties stipulated the writ petition would be heard as a complaint for declaratory relief, and that the issue to be determined was this: Whether the setting and adjusting of retirement and death allowances (after Proposition D was added to the Charter) are subject to negotiation and arbitration under section 8.590 and all of its subdivisions. [\[FN2\]](#)

[FN1](#). Unless otherwise indicated, all section references are to the City Charter (the Charter).

[FN2](#). Although Union (representing police officers) is the only employee representative party to this appeal, we note that Proposition D, incorporated into the Charter as "Part Nine" thereof, provides for "Impartial Arbitration of Wage and Benefit Disputes for the

Fire Department, Police Department and Airport Police Officers." We are informed the airport police officers have been members of the Public

Employees Retirement System since 1985. For the sake of simplicity, future references to retirement benefits or allowances will include death benefits as well.

The trial court gave its statement of decision on the record and entered judgment for the Union, from which the City appealed.

The California Supreme Court granted review of our first decision in this case. We therein considered only the issue the parties briefed: whether Proposition D changed the Charter's existing method for determining retirement allowances for police and firemen (safety employees). The parties previously conceded (before the Meyers-Milias-Brown Act (MMBA) ([Gov.Code, §§ 3500- 3510](#)) issue entered this appeal) that prior to the passage of Proposition D the Charter vested the City's electorate with the sole power to change or modify its provisions prescribing the formulae for establishing retirement allowances of safety employees. The high court retransferred the case to us for reconsideration in light of its decision in [Voters for Responsible Retirement v. Board of Supervisors \(1994\) 8 Cal.4th 765, 35 Cal.Rptr.2d 814, 884 P.2d 645 \(Trinity County\)](#).

*423 In reconsidering this appeal, we will again reverse the judgment below, holding: (1) Proposition D reserved to City voters the sole power, theretofore vested in the electorate by the Charter, to enact future Charter amendments modifying its provisions prescribing the formulae for setting such retirement allowances. (2) The MMBA does not preempt that reserved power, constitutionally vested in City voters by the Charter.

We will address the effect of Proposition D in the first portion of this opinion. In the second portion of this opinion, we will address the issue of MMBA preemption, which was previously neither briefed nor argued before us or the lower court.

I. HISTORY AND BACKGROUND

The first issue presented here is this: Did Proposition D (as the lower court ruled) divest the City's electorate of its power to set the formulae for retirement allowances of safety employees and vest it in a panel of arbitrators if the City and Union reached an impasse in negotiations? The continued effectiveness and operation of section 8.500, an existing Charter provision, was provided for by Proposition D. (§ 8.590-7(a).) Section 8.500 states in pertinent part: "In order to continue in force provisions already existing for retirement and death benefits for officers and employees of the [City,] the [City] Employees' Retirement System ... is hereby continued. The enactment of Sections 3.670, 3.672 and Sections 8.500 to 8.581, inclusive, of this charter is not intended to, and shall not in any way, alter or modify the rights, benefits, or obligations of any member or beneficiary of the retirement system *or of the [City] with respect to that system as they exist at the time this charter becomes effective* [November 1988]." (Italics added.)

Section 8.500 only granted to the City's Board of Supervisors (Board) limited powers regarding retirement allowances, viz.: to enact by a three- fourths vote necessary ordinances to carry certain Charter provisions into effect, subject to acquisition of an actuarial report of the cost and effect, inter alia, of proposed changes in retirement system benefits "before voting to submit [to the voters] any proposed charter amendment providing for such change"; and to

make changes in retirement benefits to conform with federal tax law.

The City's retirement system (§§ 3.670-3.674) is exclusive to its employees, retired system members, and their survivors and beneficiaries; and is operated as a trust fund administered by a separate retirement board whose duties extend to the whole retirement system. Provisions concerning retirement of safety employees, while separately stated in the Charter, are but a part of the system, funded as a whole. Increases in retirement benefits of certain plan participants, by adjusting upward the formulae which determine their allowances, can arguably result in underfunding of the system which must serve other City employees.

[1][2] The retirement benefits of public employees vest and cannot be revoked once granted. ([Miller v. State of California \(1977\) 18 Cal.3d 808, 815, 135 Cal.Rptr. 386, 557 P.2d 970.](#))

Because they are earned property of the employee, benefit pension increases are usually irreversible. ([Betts v. Board of Administration \(1978\) 21 Cal.3d 859, 863, 148 Cal.Rptr. 158, 582 P.2d 614 \(Betts\).](#)) This is illustrated by the City's experience of the 1970's. In 1975, in one of the plethora of City ballot measures addressing retirement benefits, the voters enacted a "Tier I" retirement plan affecting retired police officers and firefighters, providing them with cost of living adjustments related to the salaries of current employees. The voters eliminated the plan one year later, but its emergence created over \$1 billion in unfunded liability because these rights were vested in all police and firefighters in the City's employ during the life of "Tier I." The City, consequently, during the ensuing decade, was obliged to fund \$100 million annually to its retirement system in addition to its obligations preceding the adoption of Tier I. The City has long reserved to its voters the power to change formulae determining retirement allowances. Section 151 of the revised Charter of 1932 gave that power to *424 the voters.

[FN3] (Stats.1931, ch. 56, ex. D, pp. 3066-3067.) Section 158 (succeeded by section 8.500) continued that existing power in the voters, only permitting the Board to pass legislation relating to retirement allowances without alteration of the formulae by which such allowances were set. (Stats.1931, ch. 56, ex. D, pp. 3070-3071.) After the 1932 Charter, the power to set retirement allowances was clearly vested in City voters. One consequence has been a continuous series of ballot measures proposing Charter amendments regarding retirement matters. About one-third of the now cumbersome Charter relates to details of retirement plans.

[FN3](#). Section 151 gave the Board control over all employee benefits and salaries "except pension and retirement allowances." (Stats.1931, ch. 56, ex. D, p. 3066.)

In the wake of firefighters and police strikes in 1976 (see discussion [San Francisco Fire Fighters v. Board of Supervisors \(1979\) 96 Cal.App.3d 538, 550-551, 158 Cal.Rptr. 145](#)), this court (Division One) rejected, inter alia, an argument that Charter amendments proposed to the City voters by the Board were invalid because they " 'contravened a written agreement executed by Mayor Joseph L. Alioto in the exercise of emergency powers granted him by the Charter' " ([ibid.](#)).

Included in those Charter amendments was section 8.407 (since repealed in 1994), stating: "It is the declared intent of the qualified electors of the [City] that the [Board] has no power to provide any benefits of employment except those already provided for in the charter and any addition, deletion or modification of benefits of employment shall be submitted, as a charter amendment, to the qualified electors of the [City]."

In November 1988, section 8.500 was amended to give the Board the narrow power to change

the retirement plans only when necessary because of changes in federal tax laws on specifically listed conditions (a recommendation of necessity by the City Retirement Board, a report to the Board on the proposal's cost and effect, and approval by three-fourths of all Board members). In sum, from 1932 to the enactment of Proposition D, the setting of the formulae for retirement allowances for safety employees has been reserved to the voters under the Charter; neither the Board nor any other entity was authorized by the Charter to do so. The parties recognized this in the initial briefing we received, and limited their argument exclusively to the issue of whether Proposition D amended the Charter to vest the power to change the City's formulae for setting retirement allowances by binding arbitration if the City and Union's negotiation resulted in an impasse. We turn first to that issue.

Proposition D generally establishes a framework for good faith negotiations between the City and safety employees, including impasse resolution procedures and binding arbitration of wage and benefit disputes.

We first briefly outline the basic provisions of Proposition D, with special emphasis on the provisions pertaining to safety employees' retirement benefits. Our summary description of the measure is not intended to be determinative of the meaning or legality of its provisions, apart from the specific issues considered herein. (See [*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* \(1978\) 22 Cal.3d 208, 220, 149 Cal.Rptr. 239, 583 P.2d 1281 \(Amador Valley\).](#))

Proposition D was approved by the Board and submitted to and approved by the voters in November of 1990. At that time, the salaries and benefits of safety employees were arrived at using complex formulae set out in the Charter. For example, some of the elements specified in the Charter for computing safety employees' retirement allowances include age, years of service, date of hire, and final compensation upon retirement. [FN4] Because these formulae were set out in the Charter, any change in safety employees' *425 retirement allowances required a Charter amendment that had to be submitted to the voters for their approval.

[FN4]. The Charter formulae are complex and consider a myriad of factors. For instance, under one of the formulae, a police officer hired after 1976 who completes at least 25 years of service and attains the age of 50 is entitled to receive a retirement allowance equal to 50 percent of the officer's highest average compensation, plus an additional 3 percent for every year of service over 25 years, not to exceed 70 percent of the officer's final compensation. (§ 8.586-2.)

Proposition D was designed to "supersede and displace all other formulas, procedures and provisions relating to [safety employees'] wages, hours, benefits and other terms and conditions of employment found in this Charter...." (§ 8.590-1.) While existing wages, hours, benefits, and terms and conditions of employment are not eliminated by Proposition D, it requires future modifications therein to be made through negotiation or arbitration. (§ 8.590-4.) Toward this end, Proposition D requires the City to negotiate in good faith with recognized representatives of safety employees on all matters relating to the wages, hours, benefits, and terms and conditions of City employment. (*Ibid.*) Agreements reached under this process are binding on the City and supersede any conflicting procedures, provisions, and formulae contained in the Charter. (*Ibid.*) [FN5]

[FN5](#). As we explain *post*, Proposition D specifically *exempted* the fixing of retirement *allowances* by such negotiations or arbitration. (§ 8.590-6.)

In the event the City's and the safety employees' representatives reach an impasse in negotiations, the disputed issues are to be submitted to a board of three arbitrators, to be selected by a mechanism set out in the measure. (§ 8.590-5(b).) The arbitrators are to hold public hearings on the contested issues, receive evidence, and cause a transcript of the proceedings to be prepared. (§ 8.590-5(c).) They are authorized to take whatever measures (such as meeting privately with the parties) that might facilitate an agreement. (*Ibid.*) If no agreement is forthcoming, the City and the safety employees' representatives are to submit a last offer of settlement on each remaining disputed issue. (§ 8.590-5(d).) The arbitrators are to resolve each disputed issue by majority vote after considering specified criteria, including the City's financial condition and its ability to meet the costs of the decision of the arbitration board. (*Ibid.*)

The arbitrators' decision is to become final and binding without any further action unless both parties agree to a modification. (§ 8.590-5(e).) The City and the safety employees' representatives are required to take whatever steps are necessary to carry out the arbitration board's decision. (*Ibid.*) The measure also contains a prohibition against strikes similar to that previously existing in the Charter. (§§ 8.590-3, 8.345, 8.346.)

Proposition D, as submitted to the voters, contained provisions protecting the tax-exempt status of the City's retirement system. They require, inter alia, that any negotiated or arbitrated modification of the retirement system cannot become effective until the Board, by a three-fourths vote, certifies that the change presents no risk to the tax-qualified status of the retirement system and will not increase the taxes of City employees. (§ 8.590-7(b)(2).)

II. *THE INSTANT CONTROVERSY*

After Proposition D was adopted, the Union initiated this action challenging the City's refusal to apply Proposition D to issues "calling for the alteration, modification or improvement of retirement benefits...." For example, the City declined to apply the Proposition D procedure, which leads to binding arbitration, to a proposal to permit the early retirement of police officers, although the City did negotiate on this point. The Union argued that these early retirement issues fell within the scope of subjects that must, under Proposition D, be negotiated with compulsory and binding arbitration to resolve any impasse. The City contended that the time-honored voter-approved method of setting and adjusting formulae for determining retirement allowances was undisturbed by the passage of Proposition D. The parties stipulated that the matter could be heard as an action for declaratory relief. So considered, the court granted judgment for the Union. We review the lower court's judgment on this issue *de novo*. ([DeYoung v. City of San Diego \(1983\) 147 Cal.App.3d 11, 17, 194 Cal.Rptr. 722.](#))

III. *DISCUSSION*

A. *The Plain Meaning of Proposition D*

[3] In a measure directed to the voters, the language contained in the ballot measure *426 itself must provide the voters with adequate notice of its objectives. As stated in [Leshner Communications, Inc. v. City of Walnut Creek \(1990\) 52 Cal.3d 531, 543, 277 Cal.Rptr. 1, 802 P.2d 317 \(Leshner Communications\)](#), "we presume that the voters intend the meaning apparent on the face of an initiative measure"; and the reviewing court may not "rewrite it to conform to an assumed intent that is not apparent in its language." (See also [Amador Valley, supra, 22](#)

[Cal.3d at p. 245, 149 Cal.Rptr. 239, 583 P.2d 1281.](#)) In the same vein, courts have repeatedly cautioned that in construing voter-approved measures, " ' " 'words must be understood, not as the words of the civil service commission, or the city council, or the mayor, or the city attorney, but as the words of the voters who adopted the amendment. They are to be understood in the common popular way, and, in the absence of some strong and convincing reason to the contrary, ... they are not entitled to be considered in a technical sense inconsistent with their popular meaning.' " ...' [Citation.]" ([AIU Ins. Co. v. Gillespie \(1990\) 222 Cal.App.3d 1155, 1159, 272 Cal.Rptr. 334](#) and cases cited therein.) The parties direct our focus to different provisions of Proposition D in ascertaining the intent of the electorate.

The Union points to general provisions setting out the parties' obligation to "negotiate in good faith" over all matters relating to "wages, hours, benefits and terms and conditions of [City] employment...." (§ 8.590-4.) " 'Benefit' " is defined as including " 'retirement allowance,' " " 'death allowance,' " and " 'death benefit.' " (§§ 8.509(a), 8.559-1, 8.584-1, 8.585-1, 8.586-1.) A negotiated or arbitrated settlement under these provisions is binding on the City and "shall supersede and displace all other formulas, procedures and provisions relating to wages, hours, benefits and other terms and conditions of employment found in this Charter...." (§ 8.590-1; see also §§ 8.590-4, 8.590- 5(e).)

[4] These provisions contain no express language amending or repealing the authority for setting pension formulae contained in the Charter, or divesting or purporting to divest the voters of the long reserved right to approve modifications to these formulae. The question, therefore, is whether these provisions of Proposition D implicitly repeal existing Charter provisions which reserve to the electorate the final decision on how formulae for retirement allowances are to be set and adjusted. We initially encounter the cardinal rule that "repeals by implication are disfavored." ([Leshar Communications, supra, 52 Cal.3d at p. 541, 277 Cal.Rptr. 1, 802 P.2d 317.](#))

The City argues that Proposition D's section 8.590-6 impels the conclusion that the voters, in adopting the broad bargaining requirements of Proposition D, did not implicitly amend or repeal the earlier Charter enactments. Rather, the drafters of Proposition D crafted with precise care a provision indicating that no change was intended in the former method of setting and adjusting retirement allowances. Section 8.590-6, in relevant part, provides: "*Retirement and death allowances shall continue to be set and adjusted pursuant to Chapter Five of this Article*, except that the amount to which said allowances are set and adjusted shall not be less than the amount said allowances would be if the salaries of the uniformed forces in the police and fire departments continued to be set pursuant to Charter Section 8.405." [\[FN6\]](#) (Italics added.) The City argues that when looking for an indication of whether the voters had retirement allowances in contemplation when Proposition D was enacted, a reference explicitly excluding retirement allowances *427 from the provisions of Proposition D is more telling evidence of the voters' intent than general provisions setting out Proposition D's broadly applicable bargaining requirements.

[FN6.](#) The reference to "Chapter Five of this Article" is to Chapter Five ("Retirement Benefit") of Article VIII ("The Rights and Obligations of Officers and Employees") of the Charter. The full text of section 8.590-6 reads: "No agreement reached by the parties and no decision of the arbitration board shall reduce the vested retirement benefits of retirees or employees of the fire department, police department or of the airport police officers. *Retirement and death allowances shall continue to be set and adjusted pursuant*

to Chapter Five of this Article, except that the amount to which said allowances are set and adjusted shall not be less than

the amount said allowances would be if the salaries of the uniformed forces in the police and fire departments continued to be set pursuant to Charter Section 8.405. Any agreement or decision of the arbitration board altering vested retirement benefits shall be subject to the written approval of the individual beneficiaries thereof." (Italics added.)

The Union argued successfully below that section 8.590-6 simply guarantees retirement allowances cannot be reduced by negotiation or arbitration below the amount to which vested or retired employees are entitled under the old Charter formulae; i.e., that the City is still required to compute retirement allowances under Chapter Five, using the salary formula contained in section 8.405, in order to create a "floor" for members of the retirement system who have acquired vested rights. In short, the Union contends (and the trial court agreed) that any ambiguity in the critical language can be resolved by limiting the express language as follows: "Retirement and death allowances shall continue to be set and adjusted pursuant to Chapter Five of this Article, [*as amended by Proposition D*]"; i.e., that such adjustments, *for the first time* since at least 1932, shall be set and adjusted by negotiation and arbitration. As our Supreme Court said in [Warne v. Harkness \(1963\) 60 Cal.2d 579, 588, 35 Cal.Rptr. 601, 387 P.2d 377](#), "There is obviously more reason to reject a claim of implied repeal where, as here, the later act does purport to *continue* the earlier one in operation." (Italics added.)

[5] We reject the Union's interpretation because it reads into section 8.590-6 a drastic limitation that nowhere appears in the words adopted by the voters and that, in fact, directly contradicts the character of those words as they appeared in the ballot measure itself. By its plain terms, section 8.590-6 provides that "Retirement and death allowances *shall continue* to be set and adjusted pursuant to Chapter Five of this Article...." (Italics added.) The Union has literally rewritten the measure by inserting the words of limitation "as amended by Proposition D" that the voters never saw. [FN7] The plain language of section 8.590-6 is unambiguous and cannot be reconciled with the Union's position. "Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language. [Citation.]" ([Leshner Communications, supra, 52 Cal.3d at p. 543, 277 Cal.Rptr. 1, 802 P.2d 317.](#))

FN7. Section 8.590-6 states that the provisions of Chapter Five "*shall continue*" (italics added), without qualification or indication that the provisions could be changed in the future by negotiation. When the voters wanted to continue bargainable benefits in effect *only until a*

negotiated agreement occurred, they knew how to say so: "Unless and until agreement is reached through negotiations ..., no existing benefit ... shall be altered, eliminated or changed." (§ 8.590-4.) "Where different language is used in different parts of a statute, we must presume the [voters] intended a different meaning and effect." ([County of San Diego v. Department of Health Services \(1991\) 1 Cal.App.4th 656, 661, 2 Cal.Rptr.2d 256.](#))

The Union's second contention relies on the language of section 8.590-4 of Proposition D, but fails to withstand analysis. Section 8.590-4 imposes a "mutual obligation [of the City and the

Union] to negotiate in good faith on all matters [defined by [Government Code section 3500](#) et seq.] relating to the ... *benefits* ... of [City] employment...." The Union concludes that since the Charter defines "benefits" as including " 'retirement allowance[s]' [and] 'death allowance[s]' " (see, e.g., § 8.559-1), section 8.590-4 compels negotiation and arbitration as the lower court found. This analysis ignores the second sentence of section 8.590-6. [\[FN8\]](#) Individual portions of statutes must be harmonized with each other, and " 'the entire statute harmonized with the body of law of which it forms a part.' " ([People v. Pappalardo \(1993\) 12 Cal.App.4th 1723, 1729, 16 Cal.Rptr.2d 512.](#)) Harmonizing sections 8.590-4 and 8.590-6, it is evident that "benefits" used in section 8.590-4 is a generic term generally covering emoluments of employment other than basic wages. "[A]llowance[]," used in the exception of section 8.590-6, is obviously intended to refer specifically to the *amount* of a pension which is set by formulae adopted by the City voters. A long established rule of statutory construction, which we apply to the Union's *428 second contention, is that general words (such as "benefits") may be restricted to harmonize them with other express provisions, such as those relating to "allowances."

[FN8.](#) See footnote 6, *ante*.

We seriously doubt that the electorate could foresee or intend the result the Union urges by passing Proposition D. While this appeal was pending, the voters considered a ballot measure, placed before the voters after meet and confer sessions between the City and the Union, that would have granted the Board sole authority to make certain changes to retirement benefits for police officers and firefighters. The voters were told in no uncertain terms that "Such changes in retirement benefits would no longer require voter approval." This proposition was defeated by nearly a two-to-one margin. By so voting, it appears the City electorate attaches great importance to the retention of control over matters affecting retirement allowances. It also appears quite likely that the electorate would have rejected the very terms the Union asserts were the intended meaning of section 8.590-6 if those terms had been spelled out to them.

[\[FN9\]](#)

[FN9.](#) While subsequent Charter amendment rejections are generally irrelevant in construing a Charter amendment (cf. [Grupe Development Co. v. Superior Court \(1993\) 4 Cal.4th 911, 922-923, 16 Cal.Rptr.2d 226, 844 P.2d 545](#)), the subsequent ballot measure rejected in this case is probative of the consistent intent of the City's electorate to retain control of retirement allowance formulae for over 60 years (see 1932 Charter, §§ 151, 158, Stats.1931, ch. 56, ex. D, pp. 3066-3067, 3070-3071). Moreover, the subsequent defeat of a measure by the voters has been relied upon by our Supreme Court as indicating the voters' intent not to pass it sub silentio in a previous ballot measure. ([Rossi v. Brown \(1995\) 9 Cal.4th 688, 699-702, 38 Cal.Rptr.2d 363, 889 P.2d 557 \(Rossi .\)](#))

A second provision adopted by the voters as part of Proposition D suggests the voters did not have in mind retirement allowances when the measure was enacted. The provisions of the Charter added by Proposition D are expressly made subject to section 8.500. (§ 8.590-7(a).)

With clarity, however, section 8.500 limits the power of the Board with regard to retirement benefits to passing ordinances (1) implementing certain designated Charter provisions regarding retirement that have nothing to do with Proposition D, and (2) responding to changes in federal tax laws. Thus, the clear command of section 8.500 is violated if an arbitration board changes retirement allowances through collective bargaining and that change is implemented by the Board.

Contrary to the Union's suggestion, this is not a case where giving section 8.590-6 a literal reading would render other sections of Proposition D "meaningless." The Union points to several sections put into place by Proposition D which clearly envision negotiated/arbitrated alterations to retirement benefits. (See, e.g., § 8.590-7(b).) The Union argues these sections were necessary because Proposition D made all aspects of retirement benefits negotiable. In assessing the Union's argument, it bears emphasizing that the parties' dispute here narrowly concerns only a few, concededly important, provisions of Proposition D dealing with the Charter-prescribed method of determining retirement formulae. The City readily concedes that other matters having a potential bearing on the final computation of a safety employee's retirement benefits *are* subject to change by negotiation and arbitration. Within the scope of bargaining, for example, are employer contributions and rates of compensation for current employees. [FN10] Consequently, a retiree's benefits can be adjusted upward or downward based on agreements reached under Proposition D affecting matters other than the Charter-prescribed retirement formulae. For that reason, the literal construction of section 8.590-6 is compatible with other provisions of Proposition D.

[FN10] Current employee salaries are tied into retirement benefit calculations under some of the formulae. For example, under one Charter-prescribed formula, when current employees receive a raise, retirement allowances are increased by 50 percent of that raise. (§ 8.559-6.)

[6] Where, as here, the statute's language is plain, the sole function of the court is to enforce it according to its terms. ([Lungren v. Deukmejian \(1988\) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299 \(Lungren\)](#).) Section 8.590-6 describes the specific employee benefit involved in this dispute, *429 "retirement and death allowances"; points to the Charter provisions in effect at the time Proposition D was enacted; and maintains them in full force and effect. This language is powerful evidence that the drafters of section 8.590-6 did not intend any other, more general provisions to govern retirement allowances. (See [Creighton v. City of Santa Monica \(1984\) 160 Cal.App.3d 1011, 1017-1018, 207 Cal.Rptr. 78](#) [specific charter provisions prevail over general ones].) We, therefore, need not look beyond the words of section 8.590-6 for resolution of this issue. (See [Solberg v. Superior Court \(1977\) 19 Cal.3d 182, 198, 137 Cal.Rptr. 460, 561 P.2d 1148](#).)

[7] It is worth noting, however, that nothing in the official information given to the voters in any way suggests an intent inconsistent with the plain meaning of the language. [FN11] In the voter information pamphlet distributed to every registered voter, "The Way It is Now" was described by stating, "Retirement benefits and death allowances are set by the Charter." In describing the proposed Charter amendments, the voters were told that "Proposition D would override any conflicting charter provision, ordinance or departmental rule *except for certain provisions of the Retirement System.*" (Italics added.) The italicized passage evidences the

precise type of restrictive methodology--exclusion of retirement allowances from the general provisions of Proposition D--that the City argues was intended by section 8.590-6.

FN11. We disavow reliance on any other documents or internal memoranda which were not presented to the voters. Such documents cannot be relevant in ascertaining the voters' intent. (See Lungren, supra, 45 Cal.3d at p. 742, 248 Cal.Rptr. 115, 755 P.2d 299.)

Furthermore, it is not implausible that a special exception would be carved out for retirement allowances. "A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity." (Betts, supra, 21 Cal.3d at p. 863, 148 Cal.Rptr. 158, 582 P.2d 614.) Consequently, even small changes to a retirement formula can create large, unfunded liabilities in a pension plan. These considerations raise the specter of an arbitration board granting safety employees "pensions dwarfing their relatively modest contributions" which, "in turn, would require correspondingly excessive appropriations of general tax funds to maintain the retirement system's fiscal integrity." (Allen v. Board of Administration (1983) 34 Cal.3d 114, 125, 192 Cal.Rptr. 762, 665 P.2d 534.) In sum, *retirement allowances* have a unique and potentially troubling fiscal impact. The City voters have, for over six decades, considered formulae for setting the same to be sufficiently consequential to merit reservation of amendments thereto to the electorate. They continued to do so when Proposition D was enacted.

B. The Provisions of the MMBA Do Not Preempt Existing Retirement Formulas Set Forth in the Charter

[8] As we have explained, the City voters have carefully reserved to themselves their continuing right, set forth in the Charter, to change the existing formulae by which retirement allowances are set. The Union suggests, wrongly, that this reservation of the right to approve any change in retirement allowances by the voters of a charter city violates the provisions of the MMBA as construed in Trinity County. [FN12] In Trinity County, our high court disallowed the use of a voter referendum to overturn the binding provisions of a memorandum of understanding (MOU), agreed to by negotiators of a general law jurisdiction, a county, and approved by its board of supervisors. (8 Cal.4th at p. 769, 35 Cal.Rptr.2d 814, 884 P.2d 645.) However, nothing in Trinity *430 *County*, which dealt only with general law jurisdictions, holds that charter provisions reserving the voters' right to modify formulae for setting retirement allowances may be changed without a vote of the people.

FN12. On January 19, 1995, the California Supreme Court granted the Union's petition for review and transferred this case to this division with directions to reconsider the cause in light of Trinity County, supra, 8 Cal.4th 765, 35 Cal.Rptr.2d 814, 884 P.2d 645. We have done so and find, for many of the reasons expressed in Trinity County, that it does not require a different result here.

We emphasize that the Trinity County court was very careful to note that it was *not* doing what

the Union contends it did. As the Supreme Court cautioned, "we do not decide whether the restriction of the referendum power for ordinances adopting or implementing MOU's applies to cities. We also do not decide if it applies to a consolidated city and county such as San Francisco." (*Id.*, 8 Cal.4th at p. 782, fn. 4, 35 Cal.Rptr.2d 814, 884 P.2d 645.) Therefore, we are writing on a clean slate. [FN13]

FN13. In *Trinity County*, our Supreme Court not only noted that it was not deciding whether the voters in a city, as opposed to a county, retained the power to submit negotiated labor agreements to referendum, the high court also declined to indicate any view as to the correctness of our prior opinion in *United Public Employees v. City and County of San Francisco* (1987) 190 Cal.App.3d 419, 426, 235 Cal.Rptr. 477 (review den. Jun. 2, 1987) (*United Public Employees*), which held the City voters retained the right by charter "to approve 'any addition, deletion or modification of benefits of employment....'" (*Trinity County, supra*, 8 Cal.4th at p. 782, 35 Cal.Rptr.2d 814, 884 P.2d 645.) The high court indicated in dictum that *United Public Employees* had "understated the problematic nature of the relationship between the MMBA and the local referendum power" as applicable to a general law jurisdiction, such as a county. (*Trinity County, supra*, 8 Cal.4th at p. 782, 35 Cal.Rptr.2d

814, 884 P.2d 645.) *United Public Employees* did not involve the relationship between the MMBA and the "local referendum power"; *United Public Employees* dealt instead with the need to amend a city charter.

Moreover, here we are certainly not dealing with a situation comparable to that in *Trinity County*, where the county's board of supervisors had already *agreed* to a *binding* MOU changing retirement benefits for county employees; whereupon the voters sought to overturn the binding agreement. (8 Cal.4th at pp. 770-771, 35 Cal.Rptr.2d 814, 884 P.2d 645.) No applicable charter provision existed in Trinity County reserving the voters' right to approve any proposed changes to the formulae for setting retirement allowances, as there are here. A referendum overturning an already binding contractual commitment concerning retirement benefits would obviously be suspect. Here, by contrast, there could be no such binding agreement changing retirement allowances until the voters approve a Charter amendment; this case does not concern use of the local referendum power to overturn an existing binding agreement.

The *Trinity County* issue, the validity of a referendum on a previously negotiated labor agreement, is not raised in the present case. Instead, this case simply poses the question of the plain meaning of a measure approved by the City voters, under which many terms and conditions of employment *will* be the subject of binding collective bargaining negotiations and arbitration. The setting and modification of formulae on which retirement benefits for employees are based will not be the subject of that process, but will continue to be set under existing Charter provisions by the voters. Nothing in *Trinity County* or the MMBA speaks to the issue before us.

It is important to emphasize that we deal here with a charter city, not a general law city; and perhaps most important, the MMBA itself provides that in such a case the charter power shall be paramount: "Nothing contained herein shall be deemed to supersede the provisions of existing ... charters ... which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations...." (Gov.Code, §

[3500.](#)) Thus, the Charter's method, approved by the voters through Proposition D, of handling "meet and confer" negotiations concerning certain terms and conditions of employment, while leaving intact existing Charter provisions dealing with the power to set formulae for employees' retirement allowances, neither conflicts with nor supplants the MMBA. Numerous decisions of our Supreme Court, in accord with our decision in [United Public Employees](#), have so held. (See [City and County of San Francisco v. Cooper \(1975\) 13 Cal.3d 898, 922, 120 Cal.Rptr. 707, 534 P.2d 403 \(Cooper\)](#) ["This, of course, does not mean that the 'meet and confer' process may supplant the charter's prevailing wage guidelines; the [MMBA] itself recognizes the continued validity of such *431 charter provisions."]; accord, [City and County of San Francisco v. United Assn. of Journeymen etc. of United States & Canada \(1986\) 42 Cal.3d 810, 816, fn. 5, 230 Cal.Rptr. 856, 726 P.2d 538 \(Journeymen\)](#) ["[City] employees are subject to the [provisions of the MMBA], but only to the extent that its provisions are not inconsistent with the [Charter].".])

We, consequently, see no cause to reconsider the actual holding in our prior [United Public Employees](#) decision, which applied only to a charter city such as San Francisco. We are bound by our Supreme Court's ruling that the MMBA does not impair "the continued validity of such charter provisions." ([Cooper, supra, 13 Cal.3d at p. 922, 120 Cal.Rptr. 707, 534 P.2d 403](#); see [Auto Equity Sales, Inc. v. Superior Court \(1962\) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937 \(Auto Equity Sales\)](#).) Although mindful of the [Trinity County](#) court's dictum that in [United Public Employees](#) we "understated" the conflict between the Charter and the MMBA ([Trinity County, supra, 8 Cal.4th at p. 782, 35 Cal.Rptr.2d 814, 884 P.2d 645](#)), we find our observations there were consistent with those of the Supreme Court cases cited *ante*, as well as with [Building Material & Construction Teamsters' Union v. Farrell \(1986\) 41 Cal.3d 651, 224 Cal.Rptr. 688, 715 P.2d 648 \(Farrell\)](#), which [United Public Employees](#) cited and relied upon: [\[FN14\]](#) "Considering the general rules of statutory construction, the specific wording of the charter provision in this case, and the weight of authority concerning the compatibility of the meet and confer requirements of the MMBA with local laws and agreements, we conclude that the [Charter] does not conflict with those requirements." ([Farrell, supra, 41 Cal.3d at p. 667, 224 Cal.Rptr. 688, 715 P.2d 648.](#))

[FN14.](#) [Farrell](#) was cited by [United Public Employees](#) for the proposition that "statutory enactments such as the MMBA should be construed, if possible, to avoid conflict with city charters." ([190 Cal.App.3d at p. 423, 235 Cal.Rptr. 477.](#))

In order to see more clearly, however, why the Charter provisions in issue here are not preempted or superseded by the MMBA, it is useful to examine the relevant precedents dealing with the interactions between the Charter and the MMBA in more detail.

The MMBA was enacted in 1968. [\[FN15\]](#) From that time to the present, at least three decisions by our Supreme Court have actually discussed the proper scope of its application to employee benefits specified in the Charter, as in this case; and all three decisions indicated city charter provisions would not be invalidated based upon perceived conflicts with the MMBA.

[FN15.](#) The MMBA established a procedure by which local public

employees could " 'meet and confer' " with employer representatives regarding wages and benefits. (See [Cooper, supra, 13 Cal.3d at p. 922, 120 Cal.Rptr. 707, 534 P.2d 403.](#)) The MMBA is not intended to supplant existing city charter provisions; rather, the MMBA "itself recognizes the continued validity of such charter provisions. [Citations.]" ([Ibid.](#)) The provisions of Proposition D are similar to those of the MMBA, with two critical exceptions. First, Proposition D contemplates recourse to binding arbitration, which the MMBA does not. Second, Proposition D, as we have discussed above, was expressly made inapplicable to changes in the formulae setting retirement allowances, which remain governed by the Charter. Otherwise, Proposition D incorporates the provisions of the MMBA requiring good faith negotiation of benefits. (§ 8.590-4.)

First, in [Cooper, supra, 13 Cal.3d at pages 921-922, 120 Cal.Rptr. 707, 534 P.2d 403](#), our high court dealt with a contention that a wage increase arrived at under the terms of a provision of the Charter, mandating the application of a prevailing wage standard to City employees, was in conflict with the provision of the MMBA: "This contention appears to rest upon an erroneous assumption that the application of the charter's 'prevailing wage' standard inherently conflicts with any 'meet and confer' or negotiating process." The high court also indicated that the MMBA provided no basis for invalidating the Charter provision on prevailing wages, which is analogous to the Charter provisions concerning retirement allowances in issue here: "This, of course, does not mean that the 'meet and confer' process may supplant the charter's prevailing wage guidelines; the [MMBA] itself recognizes the continued validity of such charter provisions. ([Gov.Code, § 3500....](#))" ([Id. at p. 922, 120 Cal.Rptr. 707, 534 P.2d 403.](#)) Thus, [Cooper](#) holds the *432 obligation to meet and confer certainly does not "inherently conflict []" with the Charter provision providing a certain wage or benefit standard for City employees; and in the unlikely event that such a conflict did seem to arise, the MMBA itself would recognize the "continued validity" of the Charter provision in question. [\[FN16\]](#)

[FN16.](#) We also note that a charter city's power of home rule over its municipal affairs is far greater than that of a general law jurisdiction, or even that of a charter county. (See [Dibb v. County of San Diego \(1994\) 8 Cal.4th 1200, 1207-1208, 36 Cal.Rptr.2d 55, 884 P.2d 1003.](#)) Further, even laws of statewide application are not relevant to charter cities where the Legislature does not intend to apply them to overturn the provisions of a city charter, such as the retirement allowances provision in issue here. (See [DeVita v. County of Napa \(1995\) 9 Cal.4th 763, 783- 784, 38 Cal.Rptr.2d 699, 889 P.2d 1019.](#)) This power of home rule is

subject to the overriding preemptive power of the Legislature in certain matters of statewide concern (see [ibid.](#)), but there is no statewide concern requiring the provision of more generous retirement allowances to City employees. While the MMBA or Proposition D may require the City to "meet and confer" regarding retirement allowances, a subject we discuss *infra*, that duty to meet and confer does not include the duty to reach any particular agreement requiring a change to those retirement allowances. (See [People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach \(1984\) 36 Cal.3d 591, 600-601, 205 Cal.Rptr. 794, 685 P.2d 1145](#) ["No such conflict exists between the city council's power to propose charter amendments and [\[Government Code\] section 3505](#). Although that section encourages binding agreements resulting from the parties' bargaining, the governing body of the agency--*here the city council--retains the ultimate power to refuse an agreement and to make its own decision.* [Citation.]

This power preserves the council's rights under article XI, section 3, subdivision (b) [of the California Constitution]--it may still propose a charter amendment if the meet-and-confer process does not persuade it otherwise." (Italics added.)])

Second, in [Farrell, supra, 41 Cal.3d at pages 664-667, 224 Cal.Rptr. 688, 715 P.2d 648](#), our high court extensively reviewed the case law concerning the proper way to harmonize the provisions of a city charter and the MMBA, in the context of a decision by the City Civil Service Commission to reclassify certain positions pursuant to the power delegated to the commission in the Charter. "It is well settled that statutes should be construed in harmony with other statutes on the same general subject. [Citations.].... The same rule of construction applies to a potential conflict between a statute and charter provision. [¶] The relevant section of the [Charter] clearly gives the civil service commission the authority to 'reclassify' and 'reallocate' employment positions in city government. It is far from clear, however, that this power conflicts with the meet and confer provisions of the MMBA. First, although the MMBA mandates bargaining about certain matters, public agencies retain the ultimate power to refuse to agree on any particular issue. ([Glendale City Employees' Assn., Inc. v. City of Glendale \(1975\) 15 Cal.3d 328, 334-336 \[124 Cal.Rptr. 513, 540 P.2d 609\]](#), cert. den., 424 U.S. 943 [96 S.Ct. 1411, 47 L.Ed.2d 349]) Thus the power to reclassify employment positions is not necessarily inconsistent with the requirement to meet with employee representatives and confer about reclassifications before the changes are implemented." ([Id. at p. 665, 224 Cal.Rptr. 688, 715 P.2d 648.](#))

Thus, [Farrell](#) recognizes and holds that the provisions of the MMBA can and should be harmonized, if possible, with the provisions of a city charter. Further, [Farrell](#) directly holds that the MMBA does not require that public agencies enter into a binding agreement on any particular matter, such as changes to retirement allowances prior to a vote of the people on a charter amendment, as in this case: "[P]ublic agencies retain the ultimate power to refuse to agree on any particular issue." ([41 Cal.3d at p. 665, 224 Cal.Rptr. 688, 715 P.2d 648.](#))

Third, in [Journeymen, supra, 42 Cal.3d at page 816, footnote 5, 230 Cal.Rptr. 856, 726 P.2d 538](#), the high court again reaffirmed these principles by summarizing the applicable law as follows: "[City] employees are subject to the [MMBA], but only to the extent that its provisions are not inconsistent with the [Charter]. (See [Farrell, supra,](#) 41 Cal.3d 651 [224 Cal.Rptr. 688, 715 P.2d 648])"

Thus, the thrice-repeated holdings of our Supreme Court, in the context of the very Charter in issue here, are that (1) we should seek to harmonize the provisions of the Charter and the MMBA if possible ([Cooper, supra, 13 Cal.3d at p. 922, 120 Cal.Rptr. 707, 534 P.2d 403](#)); (2) the decision makers of the *433 public agency, in this context the City voters, "retain the ultimate power to refuse to agree on any particular issue" ([Farrell, supra, 41 Cal.3d at p. 665, 224 Cal.Rptr. 688, 715 P.2d 648](#)); and (3) in the event of an irreconcilable conflict between a charter provision and the MMBA, the charter provision would govern ([Journeymen, supra, 42 Cal.3d at p. 816, fn. 5, 230 Cal.Rptr. 856, 726 P.2d 538](#)). We are obviously bound by these rulings and follow them. ([Auto Equity Sales, supra, 57 Cal.2d at p. 455, 20 Cal.Rptr. 321, 369 P.2d 937.](#))

The application of these principles to this case can yield only one result. The charter provisions concerning setting of retirement allowances, explicitly preserved by Proposition D, survive any challenge based upon the MMBA. It was certainly never intended that the MMBA's "meet and confer" obligation should overrule or invalidate a substantive provision in the Charter relating

to retirement allowances, and repeated decisions by our Supreme Court negate such a conclusion. More critically perhaps, there is in fact no irreconcilable conflict between the MMBA and the Charter provisions reserving the electorate's authority to change the formulae by which retirement allowances are set, which was preserved by Proposition D; the provisions of the Charter and the MMBA may easily be harmonized. The Charter provisions continue to exist in force, until changed by a vote of the people. Proposition D did nothing to alter them, and neither did the MMBA. Where is the irreconcilable conflict?

We recognize that another issue, perhaps not directly germane, potentially exists here, which was not specifically raised in this case but may be implicit in the Supreme Court's retransfer order: Is the Union entitled to demand binding collective bargaining on the subject of these retirement allowances, solely on the basis of the statutory "meet and confer" requirements of the MMBA, even though the bargaining will not lead to binding arbitration or any necessary agreement? As we have noted, the City has, in fact, already bargained on this subject, reaching an agreement with the unions to submit the issue to the voters for approval; but the voters did not approve the proposed Charter amendment, and no local challenge was timely filed on that issue. The question, therefore, is moot.

In any event, under the decisions of our Supreme Court, there would be no irreconcilable conflict between the MMBA and the Charter provisions. If the MMBA imposes an obligation to meet and confer regarding changes in the Charter's retirement allowances, and if a tentative agreement to seek changes in those retirement allowances results, no change in the formulae by which retirement allowances are fixed may occur until the confirming vote of the people provided the necessary ratification for the change which would allow it to become binding. Thus, the City voters, through the Charter provisions which reserve this right to them, not the Board, retain "the ultimate power to refuse to agree on any particular issue." ([Farrell, supra](#), 41 Cal.3d at p. 665, 224 Cal.Rptr. 688, 715 P.2d 648.) [FN17]

[FN17](#). In [Trinity County, supra](#), 8 Cal.4th at pages 782-783, 35 Cal.Rptr.2d 814, 884 P.2d 645, our high court cited [N.L.R.B. v. Alterman Transport Lines, Inc. \(5th Cir.1979\) 587 F.2d 212](#) ([Alterman](#)), as indicating by analogy the scope of the duty of a public agency to meet and

confer under the MMBA. Careful study of [Alterman](#) reinforces our conclusion that the MMBA is compatible with Proposition D: In [Alterman](#), the Fifth Circuit held the employer in contempt for failing to bargain in good faith as it had previously been ordered to do, because the employer stalled the talks for years, repudiated the bargains reached by its own negotiators, and then refused to meet with or recognize the union. ([P. 228.](#)) However, this was only because of a long history of employer intransigence and stalling; the court also explicitly observed, "We do not dispute that an employer may lawfully reserve the right to ratify the product reached at the bargaining table." ([Id. at p. 221.](#)) The same is true here. Just as the union membership may have to ratify the result reached by union negotiators at the bargaining table, here (as to retirement allowances only) the City voters would have to ratify any change to the formulae setting retirement allowances. This reserved right of ratification, though analogous perhaps to the reserved right of initiative, does not result in any irreconcilable conflict with the MMBA. (See [Farrell, supra](#), 41 Cal.3d at p. 665, 224 Cal.Rptr. 688, 715 P.2d 648.)

As Justice Baxter observed in [Rossi, supra](#), 9 Cal.4th at page 695, 38 Cal.Rptr.2d 363, 889 P.2d 557 while upholding the authority of the City voters, acting under their *434 Charter, to

exercise their reserved constitutional power of initiative over fiscal affairs: "These constitutional and charter provisions must be construed liberally in favor of the people's right to exercise the reserved powers of initiative and referendum. The initiative and referendum are not rights 'granted the people, but ... power[s] reserved by them. Declaring it "the duty of the courts to jealously guard this right of the people" [citation], the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process" [citation]. "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." ' ' " (Accord, [Trinity County, supra](#), 8 Cal.4th at pages 776-777, 35 Cal.Rptr.2d 814, 884 P.2d 645.)

Our conclusions on this issue accord with this long tradition the Supreme Court has continuously approved. We hold the MMBA does not preempt the Charter power, solely reserved to the electorate of the City, to change by Charter amendment the existing formulae which set retirement allowances.

IV. CONCLUSION

Voters interested in whether issues affecting retirement allowances would be subject to binding arbitration under Proposition D were effectively placed on notice that "Retirement and death allowances shall continue to be set and adjusted pursuant to Chapter Five of this Article...." (§ 8.590-6.) There was nothing in the ballot summary or elsewhere in the ballot materials to alert them to a different interpretation. The plain language used in Proposition D establishes that the voters have lawfully reserved their power to approve future modifications to formulae setting retirement allowances through Charter amendments, a power which is constitutionally vested in the City's electorate by the terms of said Charter and not preempted by the MMBA.

V. DISPOSITION

The judgment is reversed, and the matter is remanded to the superior court with instructions to enter a new order consistent with the views expressed herein.

KING and [HANING](#), JJ., concur.

Cal.App. 1 Dist., 1995.

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