Court of Appeal, First District, Division 5, California.

SAN FRANCISCO POLICE OFFICERS' ASSOCIATION, LOCAL 911, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Plaintiff/Respondent,
v.
CITY AND COUNTY OF SAN FRANCISCO et al., Defendant/Appellant.

No. A063464.

Oct. 24, 1994.
As Modified on Denial of Rehearing Nov. 21, 1994.
Review Granted and Transferred to Court of Appeal Jan. 19, 1995.

Safety employees unions brought action against city challenging city's refusal to negotiate over issues calling for alteration, modification, or improvement or retirement and death benefits. The Superior Court, San Francisco County, No. 951073, Stuart R. Pollak, J., entered judgment for unions, and city appealed. The Court of Appeal, Peterson, P.J., held that city charter provisions establishing framework for good faith negotiations of wage and benefits disputes for safety employees did not require city to arbitrate proposals seeking modification of retirement and death benefits.

Reversed.

***830** Louise H. Renne, San Francisco City Atty., Dennis Aftergut, Chief Asst. City Atty., San Francisco, for appellant.

Vincent J. Courtney, Jr., Sylvia Courtney, Andrean L. Kalemis, Davis, Reno & Courtney, San Francisco, for respondent.

PETERSON, Presiding Justice.

[1] This appeal arises out of a 1990 ballot measure known as Proposition D, by which the voters added sections 8.590-1 through 8.590-7 to the Charter of the City and County of San Francisco (the City). [FN1] Proposition D establishes a framework for good faith negotiations, including impasse resolution procedures and binding arbitration, of wage and benefit disputes for firefighters, police officers, and airport police officers (collectively safety employees). Prior to the enactment of Proposition D, the exclusive means of ***831** changing the formulas by which the City sets retirement and death allowances was by a Charter amendment requiring voter approval. The dispositive question in this case is whether the voters of San Francisco, by passing Proposition D, intended to make these formulas subject to change by negotiation and binding arbitration. We find the voters were expressly told that the setting and modification of retirement and death allowances would be exempted from the bargaining requirements of Proposition D. This plain language left the existing Charter provisions undisturbed, and forecloses any obligation on the part of the City to arbitrate proposals seeking modification of safety employees' retirement and death allowances.

FN1. All further section references are to the City Charter (the Charter).

I. *THE STATUTORY FRAMEWORK*

Before reaching the contested issue, we briefly outline the basic provisions of Proposition D, with special emphasis on the provisions pertaining to safety employees' retirement and death benefits. [FN2] We caution that our summary description of the measure by no means precludes subsequent litigation regarding the meaning or legality of its provisions, apart from the specific issue 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*).)

FN2. For the sake of simplicity, future references to retirement benefits or allowances will include death benefits as well.

Proposition D was an amendment to the Charter, adopted by the San Francisco Board of Supervisors (the Board) and submitted and approved by the voters in November of 1990. At the time Proposition D was adopted, the salaries and benefits of safety employees were arrived at using complex formulas

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set out in the Charter. [FN3] 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 formulas were set out in the Charter, any change in safety employees' retirement allowances required a Charter amendment which had to be submitted to the voters for their approval.

FN3. We are informed airport police officers are members of the Public Employees' Retirement System and have been so since 1985.

FN4. The Charter formulas are complex and consider a myriad of factors. For instance, under one of the formulas, 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.)

By its own terms, 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 wiped out by Proposition D, future modifications are 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 formulas contained in the Charter. (*Ibid.*)

In the event the City 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.*)

***832** 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.)

In an obvious attempt to meet some of the objections raised by the City during the campaign on Proposition D, provisions were added to protect the tax-exempt status of the City's retirement system. Among other things, these provisions require that any negotiated or arbitrated modification of the retirement system cannot become effective until the Board, by a three-quarters 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*

Following the adoption of Proposition D, several recognized safety employee organizations (collectively the Union) initiated this action challenging the City's refusal to negotiate over issues "calling for the alteration, modification or improvement of retirement benefits...." For example, the City refused to negotiate over a proposal to permit the early retirement of police officers. The Union argued that these 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 defended its refusal to negotiate, contending that the time-honored voter-approved method of setting and adjusting retirement allowances was undisturbed by the passage of Proposition D. The parties stipulated that

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the matter could be heard as an action for declaratory relief. So considered, the court granted judgment for the Union. We consider this question de novo. (*DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 17, 194 Cal.Rptr. 722.)

III. *DISCUSSION*

[2][3][4] In a measure directed to the voters, the language contained in the ballot measure itself must provide the voters with adequate notice of its objectives. As stated in *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543, 277 Cal.Rptr. 1, 802 P.2d 317 (*Lesher Communications*), "we presume that the voters intended 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, internal quotation marks omitted.) Not surprisingly, the parties would have us focus on 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, internal quotation marks omitted.) 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).)

[5] These provisions do not contain any express language amending or repealing the pension-setting formulas contained in the ***833** Charter or signaling that the voters no longer have the right to approve modifications to these formulas. The next question, therefore, is whether these provisions work an implicit repeal over existing Charter provisions governing how retirement allowances are set and adjusted. In so deciding, we encounter head-on the cardinal rule that "repeals by implication are disfavored." (*Lesher Communications, supra,* 52 Cal.3d at p. 541, 277 Cal.Rptr. 1, 802 P.2d 317.)

The City argues that one need only look to section 8.590-6 to conclude 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." [FN5] (Emphasis 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 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.

FN5. 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

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> 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." (Emphasis added.)

The Union argued successfully below that section 8.590-6 simply guarantees that retirement allowances cannot be reduced by negotiation or arbitration below the amount to which vested or retired employees are entitled under the old Charter formulas. Toward this end, 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*]."

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...." The Union has literally rewritten the measure by inserting the words of limitation "as amended by Proposition D" that the voters never saw.

We seriously doubt that the electorate could foresee such a result by passing Proposition D. While this appeal was pending, the voters considered a ballot measure 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 San Francisco electorate attaches great importance to the retention of control over ***834** 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.

We note there is a second provision adopted by the voters as part of Proposition D that suggests the voters did not have in mind retirement and death 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, if an arbitration board changes retirement allowances through collective bargaining and that change is implemented by the Board, it violates the clear command of section 8.500.

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 retirement formulas. The City readily concedes that other matters that have 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. [FN6] 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 formulas. For that reason, the literal construction of section 8.590-6 is compatible with other provisions of Proposition D.

> FN6. Current employee salaries are tied into retirement benefit calculations under some of the formulas. For example, under one Charter- prescribed formula, when current employees receive a raise, retirement

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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.) Section 8.590-6 describes the specific employee benefit involved in this dispute, "retirement and death allowances"; and 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 and death 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 case. (See *Solberg v. Superior Court* (1977) 19 Cal.3d 182, 198, 137 Cal.Rptr. 460, 561 P.2d 1148.)

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. 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.*" (Emphasis added.) The emphasized 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.

***835** 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 v. Board of Administration* (1978) 21 Cal.3d 859, 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.) Viewing retirement allowances in light of their unique fiscal impact, we conclude the drafters of Proposition D could have logically considered the modification of retirement allowances to be of sufficient consequence to merit approval by the voters.

IV. *CONCLUSION*

We have attempted to read the provisions of Proposition D as a voter would read them at the time of the election, and not as an appellate court aided by archaic rules of interpretation and obscure staff memoranda that the voters never saw. Voters interested in whether issues affecting retirement and death 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 reserved their power to approve future modifications to retirement and death allowances through Charter amendments.

V. *DISPOSITION*

The judgment is reversed.

KING and HANING, JJ., concur.

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