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What's next, per the lawyer who won San Diego's huge Proposition B pension case

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The California Supreme Court concluded (7-0) that the city of San Diego violated state law when it put Proposition B on the June 2012 ballot. The high court didn't make — or need to make — new law in the process. Instead, the court found that the city violated the central duty of the state's collective bargaining law based on "settled law and the relevant statutory language."

Referring to then-Mayor Jerry Sanders' course of conduct — and citing its own 1984 precedent — the high court held that "allowing public officials to purposefully evade the meet-and-confer requirements of the (state law) by officially sponsoring a citizens' initiative would seriously undermine the policies served by the statute." The court held that the city's "private citizen" theory "does not withstand objective scrutiny."

It was this settled law that fueled each of multiple written bargaining requests I made to the city in 2011 on behalf of the San Diego Municipal Employees Association. All were rebuffed by then-City Attorney Jan Goldsmith, who was both an outspoken supporter of Proposition B and the legal architect of the city's refusal-to-bargain strategy.

Goldsmith mocked the unions' efforts to enforce employee bargaining rights by taking to the airwaves to dismiss the Public Employment Relations Board (PERB) as a "Mickey Mouse Star Chamber." He urged Proposition B supporters to wait for "real judges" to decide the case. The San Diego Union-Tribune Editorial Board followed his lead, calling the state Public Employment Relations Board (PERB) "Jerry Brown's rogue state agency."

But the state's highest court has now unanimously reaffirmed its precedents acknowledging PERB's expertise and requiring appellate courts to follow PERB's interpretation of the state's public sector bargaining law unless it is clearly erroneous — adding that PERB's reading of the statute and the city's duties when applied to the facts of this case was "not clearly erroneous ... but clearly correct."

The Supreme Court also didn't make new law related to initiative rights. More than three decades ago, the high court struck down a voter-approved charter amendment because the constitutional right to legislate by local initiative is not absolute. Local initiative rights, no matter how important, must yield to the state's interest in an effective, uniformly enforced collective bargaining law. San Diego's unwitting voters believed that Proposition B was lawfully before them for decision when it was not.

Now, seven years after city leaders took the city down this rabbit hole, there is a rational path forward. The high court has reversed the Court of Appeal, reinstated PERB's decision and remanded the case back to the Court of Appeal for a determination of the "appropriate judicial remedy."

On remand, the Court of Appeal must now defer to PERB's discretion in having shaped an administrative remedy that requires the city to make employees "whole" for losses as a result of the Proposition B initiative until the city or the unions (at the city's expense) take steps to get Proposition B invalidated by a court order. As PERB explained, this is the only result that effectuates the purposes of the state law by holding the city accountable for its unlawful conduct.

With this clear directive from the high court, the Court of Appeal can now promptly add a judicial remedy to PERB's administrative remedy by entry of a court order invalidating Proposition B as applied to employees represented by the four affected unions. Once the judicial invalidation remedy is complete, the city and its four affected labor unions can bargain in good faith to resolve the "make whole" aspects of this case and determine, through dialogue, whether defined contribution 401(k)-style plans have any future role for represented employee groups and — if so — when and on what terms. The retirement security of city employees who have no Social Security benefits can be appropriately considered and the city's own competitive disadvantage which arose under Proposition B can be addressed to improve the city's capacity to recruit and retain qualified employees to deliver vital city services.

Some will continue to rail against the high court's decision, and, with no facts or law on their side, will invoke references to "union bosses" and "Sacramento politicians." For those who have kept an open mind despite this baseless rhetoric, be assured that there is no reason to worry. The rule of law has been affirmed, restoring certainty to an important process that has fostered labor peace in California for five decades. In the city of San Diego, every significant economic and policy challenge related to the city's workforce has been resolved through good-faith collective bargaining — and this one will soon be added to the list.

Smith *has represented the San Diego Municipal Employees Association for 33 years. She served as lead counsel in all Proposition B-related proceedings before PERB and the courts.*