SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - August 15, 2013

EVENT DATE: 08/16/2013 EVENT TIME: 08:30:00 AM DEPT.: C-65

JUDICIAL OFFICER: Joan M. Lewis

CASE NO.: 37-2012-00084874-CU-MC-CTL

CASE TITLE: CITY OF SAN DIEGO VS. STATE OF CALIFORNIA, GOVERNOR JERRY BROWN [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 04/26/2013

The parties in this case have submitted cross-motions for judgment on the pleadings.

On December 21, 2012, this Court granted Plaintiff City of San Diego's motion for preliminary injunction. On these motions, the Defendants argue that this earlier ruling does not prevent the Court from granting the Defendants' motion. The Court agrees. However, the Court disagrees that a different result should occur on these motions.

Having taken judicial notice as requested, and considered the briefing of the parties, the Court finds that the Plaintiff City of San Diego has demonstrated that AB 1248 conflicts with the City's authority to determine compensation or pension benefits and the State has failed to demonstrate that AB 1248 involves a statewide concern.

In *City of Downey v. Bd. of Amin.* (1975) 47 Cal.App.3d 621, 629, the court of appeal discussed the home rule doctrine. "**Article XI, section 5, subdivision (b) of the California Constitution does give full power to charter cities to provide for the compensation of their employees. It is clear that provisions for pensions relate to compensation and are municipal affairs within the meaning of the Constitution**. (See *Bellus v. City of Eureka* (1968) 69 Cal.2d 336, 345, 351-352 . . . .) It is also clear that a charter city has full control over its municipal affairs, and in respect to them is not subject to general law except as the charter may provide. (*City of Grass Valley v. Walkinshaw,* 34 Cal.2d 595, 599 . . .; *City of Roseville v. Terry,* 158 Cal.App.2d 75, 76 . . . ; *City of Santa Monica v. Grubb,* 245 Cal.App.2d 718, 724 . . . .) However, '**The municipal affairs doctrine does not foreclose state legislation with respect to municipal affairs of a home rule city; it is only in the event of a conflict between local and state regulations** or state preemption of local regulation **that the question whether the matter regulated is a municipal affair or of statewide concern becomes determinative**. (*Bishop v. City of San Jose,* 1 Cal.3d 56, 62 . . . .)' (*CEEED v. California Coastal Zone Conservation Com.,* 43 Cal.App.3d 306, 320 . . . ." [Emphasis added]

On the record before it, the Court finds that AB 1248 conflicts with the City's administration of the Charter amendments enacted by way of Proposition B and the City's authority to determine compensation or pension benefits for its employees. To require the City and its employees to contribute to Social Security would significantly reduce the available monies that the City and, based on earlier briefing, its employees' Unions, agreed would be contributed into a defined contribution plan. Moreover, AB 1248 itself demonstrates its conflict with Proposition B when it is noted to only apply to the City of San Diego and appears to have been drafted in direct response to Proposition B. See, for

example, Defendants' Request for Judicial Notice Ex. 1 – Analysis of the Third Reading of Assembly Bill (AB) 1248 ["Today, San Diego would like to eliminate the defined benefit pension plan by vote of the people and replace it with a 401(k) plan? (sic) Volatility in the stock market raises concerns about the security of defined contribution retirement systems. . . ."]

Defendants argued that even if there was a conflict, a statewide concern was implicated. Specifically, the need to ensure sufficient retirement income for California's citizens. As a result, the Defendants contend, the bill would still withstand constitutional scrutiny.

Again, the Court questions the "statewide concern" when AB 1248 was limited solely to San Diego. Moreover, as argued by the City, there is nothing before the Court to support the position taken by Defendants that contributing to Social Security in lieu of the defined contribution plan would result in a benefit to the City employees over the benefits anticipated to be received through the defined contribution plan. The Court does not believe that the Defendants have articulated a "convincing basis" for their action that is anything more than an "abstract state interest". See *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 560.

Based on the above, the Defendants' motion for judgment on the pleadings is denied.

Plaintiff's motion for judgment on the pleadings is granted.