

**Costa Mesa City Employees Association v. City of Costa Mesa (2012) 209
Cal.App.4th 298. (“Costa Mesa”) - What Did It Hold?**

I. Costa Mesa Court’s Discussion Of Applicable Standards.

A. Legal standard for preliminary injunction

“Defendants contend the trial court erred in granting the preliminary injunction. We disagree. ‘As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]’ (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The purpose of such an order ‘is to preserve the status quo until a final determination following a trial’ (*Scaringe v. J. C. C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, 1542.) It ‘does not constitute a final adjudication of the controversy1’” (*Ibid.*)”

(*Costa Mesa* 209 Cal.App.4th at p. 305 [emphasis added].)

B.. Appellate review of injunction order

“ If the threshold requirement of irreparable in-jury is established, then we must examine two inter-related factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: ‘(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.’” (*Id.* at p. 306.) “Appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion.” (*Id.*)

“In the end, the burden is on the party challenging the preliminary injunction to prove it was improperly granted.” (*Id.*)“On appeal, “ ‘we must interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order.’”(*Id*

II. The Holding

A. Irreparable harm-

“At the time it was issued, CMCEA's members were in serious danger of losing their livelihoods, and we cannot say the trial court abused its discretion in finding the irreparable injury requirement was met in this case.” (*Id.* at p.308.)

B. Balance of harm

“The trial court's preliminary injunction does not prevent the City from moving forward with its outsourcing plan. It can still issue RFP's, receive bids, and assess whether outsourcing is a prudent course of action for the particular services at issue.” (*Id.*)

C. “Some possibility of success on the merits”

“Regardless of the balance of interim harm, the preliminary injunction cannot be allowed to stand unless there is “some possibility” CMCEA will prevail on the merits of its action.” (*Id.* at p.309 [emphasis added].) “CMCEA's lawsuit alleges the City's outsourcing plan violates both the parties' MOU and state law.” (*Id.*)

1. MOU

“The MOU does not prohibit outsourcing altogether. Nor does it give CMCEA a veto over such plans. Per article 14.2, it simply requires the City to include the CMCEA in the process of evaluating costs and developing effective work practices, which may include the contracting out of services. Since there is no evidence the City included CMCEA in the decision-making process that led to the City's outsourcing plan, the MOU provides a basis for CMCEA's lawsuit and indicates “some possibility” of success on its contract claim. (*Id.* at pp. 309-10 [emphasis added].)

2. Constitutional authority to contract

“On the one hand, it is beyond question that cities have the implied authority to enter into contracts to carry out their necessary functions. (*Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal.App.3d 724, 734, 130 Cal.Rptr. 196.)” (*Id.* at p.310.) “As amicus curiae California Contract Cities Association correctly notes, our Supreme Court has long recognized that cities derive their authority from both the Legislature and the California Constitution.” (*Id.* at p. 810 n. 3.) “And although, as we have explained, a city's constitutional authority is subject to the general laws of the state, ‘it is otherwise as broad as that of the Legislature’ itself.” (*Id.* [citations omitted].)

“In our view, section 53060 and 37103 are actually quite germane to the plan in that they limit a city's right to contract with private entities. By implication, and as interpreted over the years, the statutes generally prohibit a city from contracting with a private entity for nonspecial services.” (*Id.* at pp. 315-16.)

D. Key holding:

“Our conclusion in this regard is not necessarily dispositive of all the issues in this case. Factual issues such as the precise nature of the services the City seeks to outsource may affect the final outcome. At this point in the controversy, however, we are convinced CMCEA's members would suffer irreparable harm in the absence of a preliminary injunction, there is “some possibility” they will prevail on both their contract and statutory claims (which are independent grounds for relief), and the relative harm to the parties favors preliminary relief. Therefore, we will not disturb the trial court's decision to grant a preliminary injunction in CMCEA's favor. (*Id.* at p.316.)

E. Stare Decisis versus dictum-

“Incidental statements of conclusions not necessary to the decision are not to be regarded as authority.” (*Simmons v. Superior Court In and For Santa Barbara County* (1959) 52 Cal.2d 373, Moreover, because the conclusion stated in the footnote was not required to resolve the issues before the court, it is dictum. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 716.

III. The Costa Mesa City Employees Association “CMCEA” Response To Te League Amicus Letter Seeking Depublication In the California Supreme Court (S2026157)

A. “Court of Appeal only found prerequisites of a preliminary injunction were met.”

“The League’s hyperbolic claim that the Court of Appeal’s decision ‘precludes all general law cities from taking advantage of economies of scale or other efficiencies, skill or competence in the private sector’ is simply false. In reality the Court of Appeal merely found that the prerequisites for the trial court’s preliminary injunction were met.” (Letter dated November 19, 2012, p.2., [emphasis added].) The CMCEA letter then quotes the key holding, quoted in the prior section of this outline.) (See section II D “Key Holding” supra.p.1)

B. Preemption not litigated per CMCEA

“The League raises this argument for the first time in its Request for Depublication letter. No Party or amici raised this argument before the Court of Appeal.” (CMCEA November 19, 2012 letter p.4, n.2.) “Cases are not authority for issues they did not consider.” (*Costa Mesa, supra*, 209 Cal.App.4th at p 307.)