



August 21, 2012

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VIA EMAIL AND REGULAR MAIL

Charles D. Sakai, Esq.
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350 Sansome Street, 3rd Floor
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**Re: Interest Arbitration Over Retirement Benefits Generally
File No. 038585**

Dear Charles:

I write to follow up on our ongoing telephonic conversations regarding how to proceed with interest arbitration on various retirement-related issues between the parties. The parties now appear to agree that interest arbitration should occur concerning pension benefits and retiree health care benefits for future employees of the San Jose Police Department who will be represented by the San Jose POA. In addition, the POA retains the right, given the legal quagmire surrounding Measure B, to present the proposal to the arbitrator for current employee retirement benefits. I believe that the City also intends to put forward a change in worker's compensation rules, but I ask that you confirm that.

The parties have been discussing, without either side committing fully, to the possible use of Judge Flaherty as the interest arbitrator. Both sides recognize the problem created by the large cancellation fees that we can incur if for any reason a hearing date is set and has to be cancelled or continued. For this reason, I again ask that the City consider using a labor arbitrator, at a fraction of the cost, to hear this dispute. If the City believes that Measure B is largely going to govern the amounts of the City's contribution to future employee retirement benefits, then it ought to be more comfortable using a labor arbitrator to decide the arbitration.

Notwithstanding this request, my office will contact Judge Flaherty to determine his availability and his cancellation policy. Again, we do this without waiving any of the normal procedures that Section 1111 requires for the selection of an arbitrator.

Charles D. Sakai, Esq.
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As we discussed in our recent telephone call, the POA is not amenable to moving forward to interest arbitration until the Attorney General has determined whether or not she will authorize the POA to proceed with its *quo warranto* action. If the POA prevails on its claim that the City failed to bargain in good faith, claims that are encompassed within the *quo warranto* application, the interest arbitration process being discussed herein would be rendered null and void. Thus, rather than go through a process that could be rendered completely unnecessary (if the POA prevails on the failure to bargain claim), and particularly when the parties have so many other issues going on between them, I am seeking a commitment from your client that we not proceed with setting a hearing date for the interest arbitration until the Attorney General decides the *quo warranto* application.

If the City will not agree to not set a hearing date, then the POA may unilaterally seek a stay to prevent the interest arbitration from proceeding until the *quo warranto* action is determined.

I also asked you during our phone call to reach out to your client about a joint letter from the parties to the Attorney General explaining the parties' desire for an expedited determination of the *quo warranto* application. Please let me know your client's position on this issue and the others described herein at your earliest opportunity.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP


Gregg McLean Adam

GMA:jag

cc: Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA
Franco Vado, Chief Financial Officer, San Jose POA
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