



March 1, 2012

44 Montgomery Street
Suite 400
San Francisco, CA
94104-4606

415.989.5900
415.989.0932 Fax
www.cbmlaw.com

Los Angeles
Sacramento
Walnut Creek

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

**Re: SJPOA Request to Bargain; Information Request
File No. 038220**

Dear Alex:

We received your letter of February 27. In our reading of it, the City appears to be unwilling to bargain with the POA over the new proposed ballot measure language that was included with your prior letter of February 21. The City maintains that (1) the parties remain at impasse and (2) the ballot measure must go to the voters in June, either as the December 5, 2011 language or the new February 23, 2012 language. It seems unyielding on each issue.

It is unfortunate that your letter conditions any further dialogue on the POA making—right now—a counterproposal to the new language. Yet, as your letter implicitly acknowledges, there have been no direct negotiations about this new language. It is true, as you point out, that “the changes being recommended by the City Manager are the same changes the City proposed *in the mediation*” But when the City presented this language in mediation it did so with the express provision that the proposal would be withdrawn unless accepted in full, in which case the December 5 ballot measure language would go forward. The parties spent minimal face-to-face time discussing the new language in mediation.

The POA also believes that it is illegal for the City to limit bargaining due to its desire to finalize its ballot measure by March 6th. (See *Santa Clara County Registered Nurses Professional Association v. County of Santa Clara* (2010) 34 PERC ¶ 109 [“mere fact that the County thought the inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation”].) Thus, while the City purports to be willing to consider a further

Alex Gurza

Re: SJPOA Request to Bargain; Information Request

March 1, 2012

Page 2

counterproposal, it is requiring that ratification occur by March 6—i.e., conditioning negotiations on the parties reaching agreement and ratifying within a few days.

The reality is that there is much to bargain about. The estimations about the City's future projected pension costs are in a state of significant flux. Projections continue to lower—dramatically. In an NBC News Bay Area Report on February 23, 2012, for example, it was reported that the City's Retirement Director had received a new estimation from the Retirement System's actuaries showing that the projected cost of employee pensions in five years had dropped further to \$310 million. This is down significantly from the \$650 million where the City started (but see below), and from the \$430 million touted until recently.

The POA has significant questions about the new language. For example, the City is now, for the first time, proposing to override Section 1111 of the City Charter to the extent that impasses concerning retirement benefits will no longer be subject to arbitration. This significant change has not been the subject of our prior bargaining.

Bear in mind, too, that the Governor's Pension Proposal is designed to apply to charter cities. One city representative was heard in a public forum suggesting that any additional costs to employees as a result of the Governor's proposal could well be in addition to those added costs to employees resulting from the ballot measure. If so, that would seem to suggest that the City would garner a significant windfall. The bottom line is that the parties had minimal discussion at the bargaining table about the impact of a gubernatorial proposal that appears to be destined to appear on the statewide ballot in November. The parties should be negotiating the impact of that proposal in addition.

As the POA considers further proposals, we request the following information:

- **Any new retirement projections received by the City from either its actuaries or those of the Retirement System.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2010/11 Budget.**
- **The City's actual Total Personnel Costs, including health care and retirement, in 2010/11 Budget.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2011/12 Budget.**

- **The City's actual Total Personnel Costs, including health care and retirement, for the period July 1, 2011 to February 29, 2012.**
- **Any City-produced information, or information received by the City, supporting the assertion that \$650 million is, or ever was, a potential City retirement cost by 2015-16 or beyond.** (As recently as February 9, 2012, in various television news interviews, the Mayor indicated that: "\$650 million is a reasonable, ballpark number even today.")
- **Any documentation of the specific savings target now being sought by the City, annualized, through its various proposals related to retirement, retiree health care and healthcare. We also ask for a breakdown by each element of both the ballot measure language proposals of December 5, 2011 and February 21, 2012.**
- **Any difference in projected savings between the City's ballot measure language proposals of December 5, 2011 and February 21, 2012.**
- **The expected cost savings of the City's ballot measure language dated February 21, 2012.**
- **The expected cost savings of the Voluntary Election Program described in section 6 of the proposal dated February 21, 2012.**
- **Any City costing of the Police and Fire proposal of November 18, 2011 and December 1, 2011.**
- **Savings projections for the City's October 24, 2011 proposal to POA/Local 230 on retirement benefits for new employees.**

Please provide us with this information at the City's earliest opportunity. In the interest of a collaborative relationship, we seek it first through our right to relevant information as part of the bargaining process (rather than a formal CPRA request).

Separate and apart from the above request for information, and aside from the request to resume bargaining, please provide us with the numeric value of the savings target the City is seeking through its various retirement reforms. And please provide us with an answer to the following question: Are the City's retirement reforms, and the savings it seeks thereunder, based on

Alex Gurza

Re: SJPOA Request to Bargain; Information Request

March 1, 2012

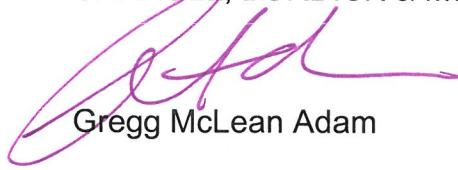
Page 4

reducing pension costs from \$650 million or some lower amount? If the latter, please provide the specific number the City is relying on.

We urge the City to rethink its rejection of further bargaining.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Jim Unland, President, San Jose POA

John Robb, Vice President, San Jose POA