

ASSOCIATION OF LEGAL PROFESSIONALS (ALP)

December 16, 2011

Gina Donnelly
Office of Employee Relations
CITY OF SAN JOSE
200 E. Santa Clara St.
San Jose, CA 95113

Re: Ballot Measure Negotiations

Dear Ms. Donnelly:

This is in response to your letter dated December 14, 2011 regarding "Ballot Measure Negotiations." The essence of your letter is to request that ALP let you know by Friday, December 16, 2011 if ALP would like to meet regarding the proposed ballot measure. The short answer is yes. However, the City cannot place any pre-conditions on doing so.

- 1. ALP is amenable to having further discussions on the proposed ballot measure provided there are no pre-conditions on such discussions.**

The City has retreated from its position of pre-conditioning engaging in further discussions over the proposed ballot measure on ALP's agreement to do so within the framework submitted by IFPTE Local 21, which includes a commitment to waive any impasse procedures.

The City's December 14, 2011 letter acknowledges that ALP is not willing to proceed on the same terms as IFPTE and "clarifies" that the City is not seeking to place conditions on further bargaining. The letter states:

... the City remains amenable to meeting with ALP in mediation, with the understanding that further discussions do not constitute reopening of negotiations over the ballot measure or in any way prejudice our position that the parties have already completed any required impasse resolution procedures.

It is clear that reason the City characterizes the ballot measure negotiation process as complete, with no reopener, is to attempt to avoid compliance with AB 646. AB 646 would impose fact-finding requirements as part of the impasse process.

ASSOCIATION OF LEGAL PROFESSIONALS (ALP)
c/o City Attorney's Office, 200 E. Santa Clara St., San Jose, CA 95113

The lengths to which the City is willing to go to avoid AB 646 are unfortunate given that the stated purpose of the legislation is to help facilitate agreement by having a fact-finding panel make objective, factual determinations that can help the parties engage in productive discussion and reach reasonable decisions. It seems like such a process could be helpful here.

In any event, for the reasons set forth below, ALP is *not* willing to agree that further discussions do not constitute reopening of negotiations over the ballot measure or that the parties have already completed impasse resolution procedures. However, ALP is willing to agree that the City's participation will not prejudice its right to make these arguments in the future.

2. The City is imposing an arbitrary deadline on further discussions.

Although the City's December 14, 2011 letter asserts that the City does not "intend" to place any conditions on bargaining, it states that "any further mediation or other procedures must be completed no later than mid February, 2012. . . ." The stated reason for this deadline is that the City has already approved the ballot measure to be placed before the voters on June 3, 2012 and that:

. . . consistent with its 'sunshine' requirements, the Council will be unable to introduce changes in the measure after February 21, 2012.

The City Council has decided that it has until March, 2012 to transmit the ballot language to the County for Council's desired placement on the June, 2012 ballot. To use the "sunshine requirements" as the reason for imposing a mid-February deadline for discussions once again shows the City's heavy handed, overreaching approach to labor negotiations. Over the past couple of years, the City Council has routinely waived the "sunshine requirements" when convenient to push forward its labor agenda. To now use those "sunshine requirements" as a sword to cut off labor discussions is untenable and results in an arbitrary deadline for completing negotiations.

3. The City's letter ignores the fact that the City Council adopted a significantly different ballot measure than the one discussed with ALP.

Much of the City's December 14, 2011 letter is devoted to "review[ing] the history" of the City's discussions with ALP on the proposed ballot measure. Even assuming for the sake of argument that this "history review" is correct, which it is not, the City's recitation of facts is simply irrelevant.

As the City concedes, the last time the City met with ALP to discuss the proposed ballot measure was on November 17, 2011. The City's letter acknowledges that after the last meeting it provided ALP with the ballot measure that would be considered by the City Council on December 6, 2011. However, in a glaring omission, the letter fails to acknowledge that the version of the proposed ballot measure provided to ALP on November 22, 2011 contained changes from the last version of the ballot measure discussed with ALP.

Similarly, the City's letter fails to acknowledge that the version of the ballot measure approved by the City Council on December 6, 2011 contained even more significant changes.

Simply stating that the City has completed its "meet-and-confer" obligation does not make it so. As ALP stated in its December 9, 2011 letter:

- Following the last meeting between the City and ALP, the City substantially revised the ballot measure at least twice; and
- Taken together, the changes to the proposed ballot measure resulted in the City Council adopting what is effectively a new ballot measure.

The City's letter provides no response to this portion of ALP's December 9, 2011 letter. As ALP stated in its letter, meeting and conferring over one ballot measure and then proceeding with what is effectively a new ballot measure does not comply with the City's meet and confer obligations under the *Seal Beach* case. ALP thoroughly agrees with the legal opinion and supporting authority expressed by the San Jose Firefighters and Police Officers in their December 13, 2011 letter to Mr. Alex Gurza.

4. Even assuming the City had not adopted what is effectively a new ballot measure, the City has never declared impasse with ALP.

The City's December 14, 2011 letter states that "the City declared impasse in November." This statement is important because if the City did **not** declare impasse, then the City has an ongoing obligation to meet and confer over the proposed ballot measure regardless of whether the proposed ballot measure adopted by the City is effectively a new ballot measure. ALP does not believe that the City ever declared impasse over the ballot measure.

Gina Donnelly
December 16, 2011
Page four

On November 1, 2011 the City sent ALP a letter regarding the "Draft Proposed Ballot Measure Negotiations." That letter referred to the discussion regarding the ballot measure and indicated that the City had contacted the State regarding obtaining a mediator. The letter never states that the City is declaring impasse.

The undersigned's bargaining notes and the bargaining notes of ALP negotiating team member Mr. Brian Doyle indicate that at the following negotiation session on November 2, 2011, Mr. Doyle asked the City's negotiating team if the City was declaring impasse. Both of our notes indicate that the City's negotiating team responded that the City was not declaring impasse.

ALP is unaware of any subsequent letters or statements from the City regarding a declaration of impasse with regard to the proposed ballot measure. The statement in the City's December 14, 2011 letter regarding impasse does not make reference to any documentation. ALP would request the City provide the letter or other documentation supporting the City's assertion that it declared impasse in November, or any other time, on the ballot measure.

5. ALP has always been supportive of fair, reasonable and legal pension reforms.

With little substance to any of its positions, the City resorts to attacking ALP's negotiating team for making "unprofessional and unproductive statements" and for its "complete lack of movement."¹ These complaints are disingenuous.

ALP apologizes to the City's negotiating team if it was offended by the use of the word "stupid" to describe the ballot measure in the heat of negotiations that were confidential at the request of the City. However, that doesn't change the fact that ALP believes the ballot measure and the City's approach to negotiations is foolish, imprudent, and ill-advised for many of the reasons discussed in this letter. By taking a confrontational approach to pushing a ballot measure that contains provisions that are patently illegal, the City is likely to end up in years of costly litigation at the end of which no true pension reform will have been accomplished. ALP believes that this approach is unwise and misguided.

¹ The City refers to ALP as "the Union" twice in this portion of the letter. ALP understands that this is probably just an oversight; however, for the sake of clarity, ALP is not a union. It is a bargaining unit not affiliated with any organized labor union.

The City's criticism of ALP based on ALP's "complete lack of movement" is particularly disingenuous. From the outset, ALP has clearly and unambiguously indicated that it supports pension reform that is fair, reasonable and legal. However, that is not what the City has engaged in.

The proposed ballot measure that was originally introduced contained a plethora of illegal, overreaching provisions. The majority of revisions made to the proposed ballot measure have stripped away many of these illegal, overreaching provisions. Even so, the proposed ballot measure approved by the City Council on December 6, 2011 contains provisions that are patently illegal, and includes an opt in program that will take months or years, if ever, to determine if it can gain IRS approval.

It is completely unreasonable for the City to criticize ALP's refusal to support an illegal ballot measure. It is even more incredulous that the City would expect any of its bargaining units to agree to a potential 25% pay decrease in addition to the 10% and other reductions that they have already agreed to.

Finally, although the City's previous discussions with ALP may not as of yet resulted in ALP supporting a proposed ballot measure, even the City concedes that the discussions were fruitful. In the City's November 1, 2011 letter to ALP, the City stated:

To date, ALP has made no proposals to the City regarding the proposed ballot measure **although the bargaining team has provided useful comments regarding the proposal, many have [sic] which have been addressed in subsequent revisions.** [Emphasis added.]

The above quote undermines the City's current assertion regarding ALP making "unproductive statements."

6. The City needs to clarify its intent with regard to the other retirement reform issues.

The City's letter does not respond to Section IV of ALP's December 9, 2011 letter regarding ALP's position that "re-engaging in mediation" over other retirement reform issues would be inappropriate. The City's letter does not mention anything about the other retirement reform issues. ALP would request clarification from the City on the City's position with regard to these other retirement reform issues.

CONCLUSION

ALP reiterates two basic principles that it has supported throughout pension reform negotiations:

1. ALP is prepared to support fair, reasonable and legal pension reform; and
2. ALP is always amenable to engaging in further discussions with the City regarding pension reform provided that the City does not impose any pre-conditions on such discussion.

Accordingly, ALP is amenable to meeting with the City on the proposed ballot measure provided that the City is not placing any pre-conditions on doing so.

Very truly yours,



VERA M. I. TODOROV

President

Association of Legal Professionals

cc: Debra Figone
Rick Doyle