



The Billy & Spanner



PRESIDENT'S NOTES

By Mike Alford

Well here we are at the start of a new year. We begin not only with a new Executive Board of the Association, but we also start with a new city government. For those of you who are not aware, Rose Herrera was appointed as the new Vice Mayor of San Jose.

We are hopeful that we can open a line of communication with the new Mayor and others in the council that will benefit our organization. Police VP Pat Boyd has expressed his desire to be the liaison between the Association and the political powers that be. I, of course, will also be involved with that process.

Fire VP Ray Storms will continue to be the go to guy for disability issues. Director Mike Moffett will be the Special events director, which entails heading up both BBQ's and next year's Christmas luncheon. He will also be in charge of the occasional request for our assistance with political events requiring someone to BBQ and serve. Jerry Ellis will continue to be the Director of Membership.

I would like to welcome our newest Board Member, John Shuman, retired Police Sgt. who came to the January board meeting to observe and decided to volunteer to serve with us as a board member. The invitation is open for anyone else who feels the urge to check it out with no obligation to serve on the board. Of course volunteers are always welcome.

Thankfully there are no negative actions towards retirees to report. I guess this month would be considered the honeymoon period for the new city administration so we will be vigilant and alert to anything the future may bring our way.

As always, if anyone has an issue they have questions about, don't hesitate to contact me or any other board member. If we don't have the answer, we will make a concerted effort to find the answer for you. We are at your service.

DO WE HAVE YOUR E-MAIL ADDRESS?

Sign up on our website to ensure you are kept up to speed with the latest Association developments.

STATUS OF MEASURE B LITIGATION

As you all know, the City's disastrous Measure B is currently tied up in litigation. There are several separate legal actions against Measure B. Below is a quick update on the legal status of Measure B compiled from the lead attorney's working on San Jose POA, IAFF Local 230 and IFPTE, Local 21 (City, Architects, Engineers, Management Employees & Maintenance Supervisors).

1. A California Public Employment Relations Board (PERB) Administrative Law Judge has tentatively ruled that the City violated State law and failed to meet and confer in good faith prior to placing Measure B on the ballot.

a. In two separate decisions (Local 230 and Local 21 (City Architects, Engineers & Maintenance Supervisors), the judge found the City acted unlawfully. If either decision is upheld, Measure B would be invalidated.

i. If upheld, the legal ruling prescribes *Measure B would be invalidated in its entirety through a subsequent writ quo warranto brought by Local 230 and Local 21*—i.e., all prior and future savings would be lost and an Attorney fee award against the City and in favor of the unions likely in the writ proceedings.

b. San Jose Superior Court, Quo Warranto: SJPOA v. City of San Jose. This is the POA's claim that the City violated State law and failed to meet and confer in good faith prior to placing Measure B on the ballot. It is the same claim as Local 230's described above. The same result is likely.

2. Santa Clara County Superior Court Judge Patricia Lucas ruled that the main cost savings provisions of Measure B are illegal.

a. Even provisions City prevailed on are subject to future lawsuits and appeals.

b. Initial Appeal could take 18-24 months and 60 months to be resolved in the California Supreme Court

c. Thus far, the City has spent \$4+ million on Meyers Nave and Renne, Holtzman, outside attorneys, on Measure B and contract negotiations.

d. Thus far, Judge Lucas has awarded attorney fees of \$1+ million to three law firms representing city workers. In determining her award, Judge Lucas ruled that the City lost the Measure B lawsuit. Her ruling states, "Plaintiffs did obtain enforcement of the fundamental right to pension benefits."

How long might the litigation over Measure B take before finally concluding?

Easily up to 5 more years. And other legal challenges could be filed in the future. For example, any police officer or firefighter who is denied a disability benefit under the new charter could sue for violation of his or her vested rights.

How much would the attorneys' fees cost if the case went that far?

Easily another \$10 million if the California Supreme Court took either case and awarded fees. Interest on attorneys' fees over all those years would itself run into millions of dollars.

Save money, save paper.

Sign up for E-Newsletter. By signing up to receive the newsletter through e-mail, you will get the same content, only you will help the Association save money on printing and postage costs. If you wish to receive the newsletter via e-mail versus regular mail, please send an e-mail to treasurer@retiredsjpoff.org

STATUS OF MEASURE B LITIGATION

Is the City likely to reverse Judge Lucas ruling in the Sixth District Court of Appeals?

It is unlikely. Judge Lucas's factual determinations will receive significant deference by the appellate court. Her legal rulings were based on long-standing California Supreme Court precedent. Only the Supreme Court can change those rulings.

How quickly could a settlement agreement be negotiated and implemented?

Settlement talks could commence when the City and its workers agree as to what the pension savings goal is, what the public policy goals are, which actuary will cost out various proposals, and who will be included in the settlement talks.

Implementation of a settlement agreement to replace all or portions of Measure B could commence as soon as an agreement is had. Lawful negotiated changes to plan benefits may be implemented by amending the municipal code, if the City does not contest the PERB ruling.

Is the PERB Board likely to reverse the Administrative Law Judge's ruling?

Very doubtful. The Administrative Law Judge's (ALJ) decision was (at 68-pages) very well-reasoned. In addition, the Local 230 and Local 21 decision offer different bases for invalidating Measure B.

Is a superior court judge required to follow the PERB ruling?

Not required, but PERB decisions are entitled to significant deference, especially where, as in this case, the ALJ was determining facts.

If the PERB ruling becomes final, what is the consequence?

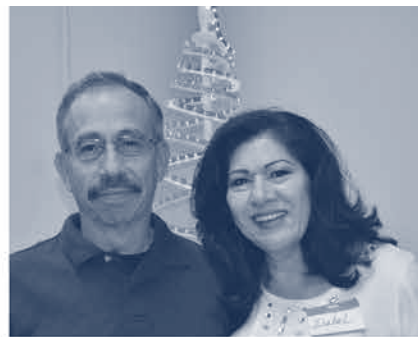
Measure B would be invalidated in its entirety. It would be swept from the books. Any savings attributable to it would be invalidated and the City would have to provide back pay and interest and most likely, attorneys fees.



NOTES FROM PAST PRESIDENT JIM SPENCE

For those members wanting to follow how the Retirement Funds are being managed, the front page of the Association website will link you to a report on the how the funds are being managed, by whom and how much of our capital is being invested in what financial areas.

Also I would like to thank the members for the plaque and gifted commemorating my three years as President. Wanda and I want to thank each of you for your support and friendship during that time. Remember no matter who is President it's the general members support which makes the Association strong.



2014 ANNUAL ASSOCIATION CHRISTMAS LUNCHEON







P.O. Box 28041
San Jose, CA 95159-8041

visit our website:
www.retiredsjpoff.org

Volume 23
No.1
January 2015



The Billy & Spanner

CALENDAR OF EVENTS

- 1/28 Burger Pit – Blue, 120 Blossom Hill Rd., SJ – 408-225-6030
- 2/4 Goodies – Wine, 2201 S. Bascom Ave, Campbell 408-369-1236
- 2/11 Bill of Fare Restaurant – Green, 1005 Saratoga Ave at Williams - 408-446-4050
- 2/12 Association Meeting 11AM to 1PM at**
the San Jose P.O.A. Hall 1151 N. 4th St San Jose
- 2/18 Hick'ry Pit – Gray 980 E. Campbell Ave., Campbell = 371-2400
- 2/25 City Diner – Tan, 2951 Monterey Rd. SJ – 269-5490
- 3/4 Burger Pit – Blue, 120 Blossom Hill Rd., SJ – 408-225-6030
- 3/12 Association Meeting 11AM to 1PM at**
the San Jose P.O.A. Hall 1151 N. 4th St San Jose

CONDOLENCES

- Kay B. Ashby, Fire Captain, Fire Department, retired July 7, 1989, died 11/5/14
- Ralph H. Donnelly, Fire Engineer, Fire Department, retired January 15, 1994, died 11/4/14
- Fred L. Farnsworth, Police Sergeant, Police Department, retired February 28, 1995, died 10/21/14
- Terry W. Guyton, Police Officer, Police Department, retired January 4, 1989, died 11/3/14
- Kenneth R. Hernandez, Firefighter, Fire Department, retired August 9, 2008, died 10/21/14
- John A. Mattern, Detective-Sergeant, Police Department, retired July 16, 1966, died 11/8/14
- Darryl A. Weeden, Fire Captain, Fire Department, active employee, died 11/27/14

ASSOCIATION OFFICERS

| | |
|-------------------------------|--|
| Mike Alford, President | president@retiredsjpoff.org |
| Pat Boyd, VP of Police | vppolice@retiredsjpoff.org |
| Ray Storms, VP of Fire | 510 507-1136 vpfire@retiredsjpoff.org |
| Dale Foster, Secretary | secretary@retiredsjpoff.org |
| Larry Samarron, Jr. Treasurer | treasurer@retiredsjpoff.org |

DIRECTORS-AT-LARGE

Jerry Ellis, Mike Moffett, Paul Schmidt, Paul Salerno, Jerry Boyer
Tim Miller, Walt Bugna

WIDOWS & ORPHANS OFFICERS

| | |
|------------------------------------|--------------|
| President (COA) Bill McCluskey | 408-497-1567 |
| VP (SJA) Larry R. Chua | 408-926-2709 |
| VP (COR) Wes Good | 408-985-7563 |
| Secretary (SJR) Jerry Boyer | 408-294-0783 |
| Treasurer (SJR) Jerry Ellis | 408-730-9974 |
| Treas. Emeritus (SJR) Mike Moffett | 408-867-0405 |

POLICE BENEVOLENT ASSOCIATION OFFICERS

President - David Wysuph, Vice President - Steve Windisch, Sec-Treasurer - Larry Lundberg,
Sgt at arms - Bob Moir www.sjbpa.net