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SAN JOSE

FIRE FIGHTERS & POLICE OFFICERS



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February 9, 2015

Honorable Mayor and City Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor and Council,

Our two unions are committed to expeditiously negotiating a global settlement that resolves all pension litigation, reduces retiree healthcare costs for the City and its employees, and provides fair labor contracts for our members. Settlement must occur in 2015. And it can be achieved without a ballot measure.

This is why, late last week, the San Jose Police Officers' Association and San Jose Firefighters IAFF Local 230 joined IFPTE Local 21 (AEA, CAMP, and AMSP), AFSCME (MEF and CEO Local 101), IBEW Local 332, and IUOE Local 3 in rejecting your proposed stipulation "...further extending the implementation date for much of Measure B."¹ Having already put off implementation four times, we have no interest in kicking the can down the road.

As a critical first step, the City Council must formally state its commitment to a global settlement based on the parameters described in this correspondence.

Once that occurs, we have two overriding goals in settlement negotiations that we hope you will share: make the City of San Jose a competitive employer again and allow it to recruit and retain a quality workforce at an affordable cost to taxpayers.

With these goals in mind, the City's decision to set an arbitrary savings target was a major step backwards. Not much thought went into the publicly disseminated target that has yet to be formally presented to us, and even less into how it restores competitiveness. Two examples stuck out to us. Both indicate that the City is inflating its target and pocketing savings already achieved—hardly the stuff of good faith negotiations.

First, the City has set a laudable goal of getting back to 1,250 police officers. Great. *But does it make sense to assume that will happen immediately* (when we currently have less

¹ See attached email sent to City's legal counsel.

than 1,000 officers) *and to consequently inflate the savings target?* We think not. The police department will readily admit that it will take many, many years before San Jose may be able to staff up to 1,250, so using 1,250 police officers when devising a savings target unnecessarily inflates the target.

Second, the City's effort to pocket substantial SRBR and retiree healthcare savings that it attributes to Measure B is extremely problematic. Our unions have always stated their willingness to *negotiate the termination of SRBR in a legally allowable manner*; thus the City assuming the savings are already guaranteed is misguided and arrogant. The City is just one finalized California Public Employment Relations Board (PERB) ruling away from the SRBR and retiree healthcare savings resulting from Measure B being eliminated, at a cost of tens of millions of dollars. If and when SRBR and retiree healthcare changes are negotiated away, credit needs to be given.

A final PERB ruling against the City is not only possible, it is extremely likely. Two PERB administrative law judge decisions already declare Measure B invalid—each offering a different basis for why the city and its negotiators broke the law. Two other decisions are pending.

In *The People ex rel. Seal Beach Police Officers Association v. City of Seal Beach*, 36 Cal.3d 591 (1984), the court upheld a quo warranto challenge to a city's failure to bargain with the labor organizations prior to placing charter amendments before the voters. It invalidated the charter amendments which had been adopted by the city voters. The court awarded attorneys' fees to the labor organizations for prevailing.

So not only do we have a \$1,039,811 attorney fee award from Judge Patricia Lucas in the Measure B litigation, we have the strong likelihood that millions more in attorney's fees will be awarded once the PERB decisions are final.

We should use the PERB rulings, because they provide the right vehicle for getting rid of Measure B and replacing it, in 2015, with a negotiated settlement that achieves the two goals set out above.

Lastly, the lack of trust we have in the bargaining process, as illustrated by the two PERB rulings referenced above, dictate the necessity of our respective legal counsels attending your closed session meetings to provide our positions in an accurate and unfiltered manner and to answer all of your questions in real-time to expedite the process.

We look forward to discussing with your lead negotiator the outcome of your closed session meeting deliberations on these very important items we have identified in this letter.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is 'Paul' and the signature on the right is 'Joel'. Both are written in a cursive, flowing style.

Paul and Joel