

Brian Doyle

May 17, 2010

Hon. Chuck Reed, Chair
Rules and Open Government Committee
San Jose City Council
200 East Santa Clara St.
San Jose, CA 95113

RE: Appeal of Denial of Records Request for Mayor's Budget Documents

Dear Mayor and Councilmembers:

On March 26, 2010 the City Manager invited the City's bargaining units to a meeting to discuss her Preliminary Budget Reduction Proposals. I attended the meeting as member of the negotiating team for the Association of Legal Professionals, along with our president and two other members of another bargaining unit. At that meeting we were handed a draft document that contained the Manager's proposed service cuts along with position eliminations, both filled and vacant, in order to meet what she has been describing as a \$116 million dollar shortfall. The City Manager looked us in the eye and told us that by giving up what you have been describing to the public as a "ten percent" cut, we could "buy back" the positions discussed in the document. She did not make a distinction between vacant and filled positions in terms of her "buy back" offer.

Having negotiated hundreds of agreements in the course of my twenty year career in the City Attorney's Office, naturally I was interested in what the other party wanted and why, so I inquired about our Office budget. I was referred to page 26 of the document where there was a total figure \$6.1 million dollars in targeted savings for all of the Council Appointees including the City's Manager's own Office as well as the Mayor and Council Offices. When asked about our particular Office budget and the proposed position eliminations for our Office and our bargaining unit, neither the City Manager nor anyone else in the room including the Budget Director or the Director of Employee Relations had any information. The next Monday, the final Preliminary Budget Reduction Proposals document was released without including any of the information that I had requested.

At our first negotiation session with City Management following that meeting, I again requested the detailed information. It was not available. The OER representative said that she would get me the information. At a subsequent meeting the City Attorney Office representative presented a budget document showing a total of \$1.4 million dollars in a budget target that included vacant position eliminations or freezes. The document did not include any proposed layoffs. I inquired about whether this was the information that was included in the Manager's preliminary budget. The response was that they didn't know. I then asked who created the \$6.1 million number and suggested that they ask the people who created it for the information that I was requesting.

When our team proposed that through not buying back the position eliminations and agreeing to do the additional work of those positions we could meet the City's budget target, we were told that our "ten percent" was "on top of" all of the City Attorney's budget reduction targets and that we could not buy back vacant positions.

The next time we met we were given a new budget document for our Office that for the first time included layoffs. We were told then that we could "buy back" the live bodies, but not use any of the vacancies as a buy down of the money that the City was seeking from us to balance its budget. When we asked where the City would use the money from the savings that it got from us, we were told that other than for buying back the layoff positions, we would not know.

Sounds confusing? We thought so too.

When I asked about my original request as to where the \$6.1 million figure came from, I was finally told that it came from the Mayor's Office and that I could not have any further details. It was then that I made my request for the documents. The purpose of my request was to determine why our bargaining unit was apparently being treated differently than the others. While the City Manager was being open vis-à-vis the units under her appointment authority about what positions the "buybacks" would save, the City's negotiating team appeared to be unable to be as forthcoming because of the lack of information from the Mayor's Office. My request was also important because we were told that the reason that the proposed layoffs were introduced after the bargaining had begun was because the Mayor's Office had determined the City Attorney's original budget proposal to be inadequate. Thus it appeared that it was the Mayor's Office that had "upped the ante" by requesting a budget that had to include layoffs. This is because our Office budget is predominantly personnel costs because we do the vast majority of the City's legal work in-house.

At the same time that our negotiations were occurring, the City Manager released the Budget which included an Attachment E – "restoration" plan. Despite the fact that the City negotiating team had already promised us that our concessions could "buy back" 3 proposed layoffs in the City Attorney's Office, Attachment E stated that we could only buy back 2 positions and that the rest of the savings would be used to save jobs at the libraries and in the parks. Now I like libraries and parks as much as the next guy, but what right-minded person would agree to a permanent pay cut pay to permanently save jobs in another bargaining unit that was refusing to try to save those same jobs by opening its contract? I would rather make a voluntary donation to the City's summer aquatics program.

No doubt you are wondering where I am going with all of this. Well, just last Thursday, right after our bargaining unit submitted its second proposal that contains concessions adequate to "buy back" the 3 layoffs proposed for our Office, your negotiating team declared an "impasse." Now while I am new to the collective bargaining process, I am not new to the concept of *bone fides*, or good faith. Granted, my sense of what is fair might be a little old school, but in all my years of negotiating contracts with public entities, large corporations, start ups, non-profits and individuals, I have never experienced anything even close to the punch in the face that this sham "negotiation" with City management has been.

At our last negotiating session it was finally revealed that indeed the City's "ten percent" concessions from us would be used not only to prevent the threatened layoffs but it would be used to hire new attorneys for our Office at possibly higher pay than what we who will have just taken cuts will make. So much for City's advertisement to the taxpayers that the ten percent cuts would be used to close a critical budget gap. This latest development also lays bare the City management argument about some kind of time crunch to come to an agreement with its legal staff. It is particularly ironic that the glaring unfairness of the negotiating process has already driven at least one highly skilled and experienced attorney to chose to retire ahead of his plans and has several others now considering it. If the cuts are being used to fund new attorneys, then why not just try to keep the attorneys you have and not have to rush to replace them?

So, if our "ten percent" concessions are not about closing the budget gap, what are they about? Well, first of all, 10% was simply an arbitrary figure arrived at by starting from the premise that cuts be across the board, regardless of their effect. There is no getting around the fact that no matter how you look at it, if there is a gap this year, it is primarily due to increased personnel costs for the police and fire departments. So, in an attempt to get them to "come to the table," you have chosen to use a meat axe to whack all of the other bargaining units at the same time. Our "ten percent" concessions will seem particularly unfair if you ultimately agree to lesser concessions with the sworn units because of their ability to go to binding arbitration. And if that happens, once again you will have robbed Peter to pay Paul and come no closer to solving what you call a structural problem.

In using this across-the-board approach to bring others to the table you have created an impression among the taxpayers that City employees are the reason that their services are being reduced. You, as Councilmembers have many choices about how resources are allocated; our compensation is only one of them. But, by demanding this pound of flesh from us, you put us in the position of having to question those choices. This is something we as your legal advisors are loathe to do, and I will resist the temptation to do so here.

Finally, you are probably wondering why I have been referring to the "ten percent" concession in quotation marks. This is because what you consider to be a 10% gain to you is far more of a cut to us. From what one reads in the newspaper one would think it is simply a 10% cut in pay. That alone is quite a haircut. But what your team has been proposing would actually mean that instead of a 10% pay cut, it is a cut in pay and medical benefits equivalent to 5% *plus* an additional 7% increase in our contribution to our pension plan on top of the 10.3% that we already are obligated to pay as our contributions toward retirement pension and medical and dental benefits, and, on top of all that, a significant takeaway of our sick leave payout at retirement. I, for example, will lose more than \$80,000 the first year alone, and this is without even counting the scheduled increases in my pension contributions and the 150% hike in medical co-pays for my family of four. I don't think that this is an effect that the taxpayers that you have been revving up are aware of.

The reason that the total is so high is because of the City's insistence on reducing by more than half the sick leave payout retirement benefit, a benefit that is a vested right not subject to being taken. This, by the way for those of you playing at home, is a much bigger cut than the cut that

was imposed on Unit 99, our former, unrepresented unit. Is this a little present for us having decided to organize?

For someone like me who has accumulated more than 1300 sick hours, the benefit represents a substantial value. I have come to work many days when I was sick, not because I wanted to accumulate the retirement benefit, but because there was important work to be done for you the City Council and for the taxpayers of the City of San Jose. But I certainly believed that you would honor your promise to pay me for the days of my life that I chose to work and provide the services, even though I could have easily called in sick. Boy was I stupid! Now that I approach retirement age, you are telling me that you are breaking your promise by taking away a benefit that I have already earned, and, quite gallingly, without getting any credit toward the "ten percent" that you keep repeating to the taxpayers. This is also a great message to send to anybody considering a career with the City: Punish the people who actually came to work and did their jobs while others used up all their sick time.

When it comes to developers who have invested their money in projects that are "in the pipeline," you have no problem understanding that it is inherently unfair to change the rules of the game after the investment has been made. Why then is it so difficult to treat your hardest working, most loyal employees with an equal degree of fairness?

So where does that leave the members of our unit? You are now threatening us through impasse with drastic cuts for which we are given no real equitable credit. These threats will probably drive even more of our most experienced attorneys out of the Office. And into this diminished workgroup of long-time employees who have just been whacked with a meat axe, you will bring new, inexperienced attorneys who at least initially will be far less productive. All without really having saved the taxpayers much money at all. Did I mention that the total amount of savings that you have been seeking is about \$900,000? Just a drop in the bucket toward the \$116 million gap, and not really closing the gap if you use the money to hire new attorneys.

So where does that leave the City and the taxpayers? A less productive, less experienced City Attorney's Office with major morale problems. Not much of deal if you ask me.

So how do we get out of this mess? Why don't we go back to the bargaining table and see if we can come to a deal that works for *all* of us? We understand these are tight times and, as in the past, we are willing to make concessions to get us through these times. All we ask is that you come with a willingness to meet us part way. I extend my hand to you personally Mr. Mayor. If you take it, and join us in finding a better solution than what has been sought, I am sure that we can resolve our differences.

And, by the way, if you agree to look for a compromise that works, I will drop my request for the papers that you don't want to give me.

Respectfully,



Brian Doyle

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San Jose City Clerk