

July 12, 2011

Gina Donnelly, Deputy Director of Employee Relations  
Aracely Rodriguez, Senior Executive Analyst  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

RE: City Draft Proposed Ballot Measures  
Letter to AEA, AMSP and CAMP Dated July 6, 2011

Dear Gina and Aracely,

As you may recall, on June 17, 2011 our bargaining units and yourself, along with City Manager Debra Figone and Director of Employee Relations Alex Gurza, signed a "PLEDGE OF COOPERATION & AGREEMENT UPON A FRAMEWORK FOR RETIREMENT REFORM AND RELATED BALLOT MEASURE NEGOTIATIONS" (Pledge).

This Pledge was agreed to with the understanding that both sides would be "*committed to negotiating in good faith to reduce the costs of the Federated City Employees' System,*" and that "***Estimated cost savings for any proposals during the negotiations shall be supported by analysis and data.***"<sup>1</sup>

The City Draft Proposed Ballot Measure delivered to our bargaining units did not include any analysis and/or data. Specifically, it did not include any projected cost savings or actuarial analysis as agreed to in Section 6 of the Pledge.

In addition, the Proposed Ballot Measure does not comply with Section 5 of the Pledge that calls for both the City actuary and our actuary to "*...work together to develop cost estimates.*" We want to be clear that we did not participate in the drafting of this Proposed Ballot Measure and are disappointed that the City would proffer such a flawed proposal that does not comply with the Pledge it signed just a short time ago.

We also are disappointed that the first City proposal ever delivered to our bargaining units with regard to retirement reform contains so many illegal elements that fly in the face of the long standing vested rights legal doctrine. Section 8 of the Pledge spells out that

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<sup>1</sup> Sections 1 and 6 of PLEDGE OF COOPERATION & AGREEMENT UPON A FRAMEWORK FOR RETIREMENT REFORM AND RELATED BALLOT MEASURE NEGOTIATIONS, June 17, 2011.

*"...neither side waives any legal rights, including the Unions' or employee's right to assert that certain benefits are vested."*

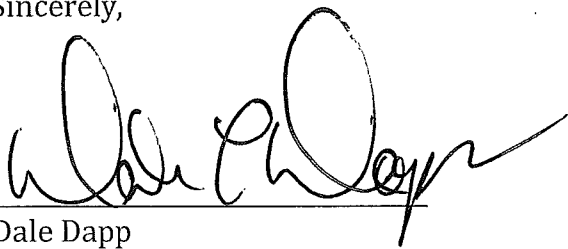
Many key elements of the initial City proposal would require our bargaining units to waive legal rights and we will not do that when we both know that there are legally permissible reforms that would avoid litigation and protect City services and the employees that deliver those services as outlined in Section 1 of the Pledge.

It is your role and that of the City Attorney, from time to time, to point out to the Council what is legal and what is not. It is not an easy task to tell your boss to tell the Council what the law is, especially when some on the Council want to use San Jose as a Guinea Pig to try and overturn the law as to vested pension benefits. But it is your responsibility to ensure that the Council does not expose limited taxpayer dollars on the folly of attempting to overturn decades of legal precedent that protects employees vested pension benefits. We hope that you share our goal of finding solutions that are legal and allowable.

With the above in mind our bargaining units reject this incomplete and in many instances illegal proposed ballot measure that attempts to gut legally protected vested pensions benefits. We are disappointed that the first written proposal by the City after signing the Pledge does not comply with several sections contained within the Pledge.

We hope we can now get back to the difficult task of negotiating pension reform and then determining how that reform needs to be implemented, either through an executed and ratified agreement, municipal code changes and/or charter changes. Let's not put the cart before the horse.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Dapp", written over a horizontal line.

Dale Dapp  
AMSP President