

SENT VIA EMAIL

December 22, 2011

Vera Todorov
President
Association of Legal Professionals (ALP)
c/o City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

RE: Ballot Measure Negotiations

Dear Ms. Todorov:

I write in response to your letter dated December 16, 2011. We are pleased to hear that ALP is interested in re-engaging in mediation. In your letter you make several statements that need to be addressed. First, and foremost, as we have indicated to you in our letter dated December 14, 2011, it is not our intent to pre-condition bargaining or mediation. We maintain that the City has fully satisfied its obligation to meet and confer and has completed impasse procedures with ALP.

In your letter you assert that the City is attempting to avoid compliance with AB 646. As we have indicated, the City has fully satisfied its obligation to meet and confer and has completed impasse procedures with ALP. This process was completed prior to the January 1, 2012, effective date of AB 646, and therefore the fact finding provisions of this legislation are not applicable. Moreover, it is by no means clear that existing law would require the City to engage in fact finding regarding a proposed charter amendment.

The City's invitation to re-engage in mediation is another opportunity to bring the parties together, and with the assistance of a mediator, attempt to reach agreement on the issues of retirement. Your allegations that the City is attempting to avoid AB 646 are unnecessary and unproductive.

For the reasons we have already specified, it is important to recognize that time is of the essence and the mediation process cannot be open ended. Consistent with the completion of impasse resolution procedures, the City Council approved the terms of the ballot measure on December 6th. Absent any agreement to the contrary, the measure (in its current form) is now scheduled to be placed on the June 3, 2012 ballot and, consistent with its "sunshine"

requirements, the Council will be unable to introduce changes in the measure after February 21, 2012. Therefore, any further mediation or other procedures must be completed no later than mid February, 2012, to ensure that any agreed-upon changes to the measure can be made before ballots are printed. This is not an "arbitrary deadline" as you allege. While we understand that you disagree with these timeframes, we are hopeful that with ALP's participation, an agreement can be reached that avoids any dispute on the timeframe.

In your letter you also assert that the City did not declare impasse. This is simply not the case. In the City's letters dated October 27th and 28th, the City requested ALP indicate its interest in utilizing the mediation provisions of the City's Employee-Employer Relations Resolution #39367, pertaining to the resolution of impasse. Further, ALP's letter dated October 31, 2011, included the following:

"Nonetheless, ALP will accept whatever access to mediation that the City allows, even if it insists upon prematurely declaring impasse."

While it is clear that ALP believes the City's declaration of impasse to be premature, it does appear that this statement acknowledges that the City had in fact declared impasse.

The City also discussed its declaration of impasse during our last meeting in November. During our meeting, ALP indicated that it had a meeting with the membership and indicated that the membership couldn't think of anything to propose to the City. Hence, from the City's perspective at least, we were at impasse as of that date. We acknowledge that ALP did not believe the parties were at impasse, but agreed to participate in mediation. As you know, the City's Employee-Employer Relations Resolution #39367 does not require mutual agreement that the parties are at impasse.

In summary, we believe it would be beneficial to re-engage in mediation with all bargaining units that represent employees in the Federated City Employees' Retirement System. We propose a meeting with the mediator to discuss the process for mediation on both the ballot measure and non-ballot measure retirement issues as well. We have scheduled mediation with Paul Roose, Supervisor with the State Mediation and Conciliation Service, for Wednesday, January 4, 2012 and January 6, 2012, at 10:00 a.m. in the City Hall Tower, Room 1734.

Sincerely,



Gina Donnelly
Deputy Director of Employee Relations

c: Debra Figone, City Manager
Rick Doyle, City Attorney