

From: Todorov, Vera
Sent: Monday, June 20, 2011 4:37 PM
To: Donnelly, Gina
Subject: FW: Framework for Retirement Reform and Proposed Ballot Measure Negotiations

Dear Ms. Donnelly,

ALP has considered the City's proposed "Framework" document (attached) that you sent to ALP negotiator Brian Doyle late afternoon, Thursday, June 16, 2011. I am responding on behalf of our bargaining unit. We have determined that we cannot sign the City's proposal. When asked at the June 13 meeting, you responded that the City is not exercising the reopener in the Tentative Agreement with ALP. So, it remains unclear in what context the City is intending to discuss pension issues. To the extent that the City wishes ALP to discuss the contents of the Mayor's Memo on the Declaration of a Fiscal Emergency and a potential ballot measure, ALP must respond that both proposals appear to be illegal and therefore outside the scope of bargaining.

Below are ALP's initial comments on each numbered paragraph in your attached Framework, but we reserve the right to make additional comments as we deem necessary. Our responses are numbered to correspond with the City's proposed Framework:

1 and 2. The City needs to take the first step to provide credible information about the financial viability of the retirement system and the retiree health benefit as separate issues. These are different issues from a financial standpoint, but have been merged by the City throughout prior negotiations in a manner that has rendered discussions meaningless. It may be that one of the benefits warrants change, while the other does not. But at this point, we don't know because we have no information from the City. Once financial analysis as to the continuing viability of each benefit has been ascertained, if changes are warranted the City needs to make an offer to our bargaining unit with any changes that the City is proposing. Such an offer needs to comply with re-opener in the tentative agreement between the City and ALP.

3. ALP proposes that negotiations be held in public.

4. ALP does not agree to abrogate the right to bring anyone it desires to represent ALP in negotiations with the City. If it desires to have its subject matter experts attend on its behalf, ALP may do so and will not agree to the limitation proposed by the City that the parties must mutually agree to the attendance of experts. In fact, ALP would encourage the City to bring its experts to our meetings since we have not had disclosure of the information the City is relying on and this would provide an opportunity for discussion that City negotiators have been unable to provide.

5. ALP does not agree to the City's proposed framework requiring ALP to engage and pay for an actuary. As the party requesting changes in the retirement and retiree health care benefits, it is the City's burden to propose changes and provide complete information as to its proposal. Moreover, the City has ready access to such information and the resources to evaluate its proposals. ALP is a very small bargaining unit with limited funding, and will engage experts only as we deem necessary.

6. The City bears the initial burden of making proposals on any benefit reductions, and proving the necessity of any proposed change and the cost savings thereof. ALP will respond with appropriate counter-proposals.

7. We do not agree that the City has any right to negotiate and declare impasse on matters affecting the vested benefits of ALP members. The City's proposal is an attempt to modify the re-opener in the Tentative Agreement with ALP, violates the Meyers-Milias-Brown Act (MMBA), and violates the contractual rights of our membership under both the federal and state constitutions. The City's ballot measure clearly violates MMBA and our membership's contractual rights. To date, the City has completely failed to propose any benefits to offset the reductions in vested benefits as required by state law. We refer to the recent Orange County Sheriff's case, which cites well settled California Supreme Court cases including Betts v. Bd. of Admin. (1978) 21 Cal.3d 859, 863, and Miller v. State of California (1977) 18 Cal.3d 808, 817. Ballot measures that would reduce the vested benefits of public employees are clearly unlawful under People v Eu

(1991) 54 Cal.3d 492, 530. In addition to the unlawfulness of the City's ballot measure, we will not agree to participate in any collective declaration of impasse with other bargaining units.

Additionally, whether the parties will be able to respond by October 31, 2011 as demanded in Paragraph 7 of the City's Framework depends entirely on when the City makes a proposal to the bargaining unit about pension reform and retiree health benefit reform, and the completeness and credibility of supporting information supplied by the City. Our unit has seen nothing to date despite repeated requests for proposals and information from the City. If the City truly desires to negotiate in good faith with our unit, the City would have a proposal and supporting documentation at the ready, and would provide sufficient time to evaluate the proposal as well as potential alternatives, instead of attempting to place an artificial deadline for agreement under the threat of placing a patently unlawful measure on the ballot.

ALP remains open to discussing the scope of future negotiations as well as the fiscal issues addressed in the Mayor's memo. We believe that the most constructive way to do this would be to come a common understanding of the fiscal issues surrounding our retirement plan as well as our retiree healthcare benefits. We are willing to participate in a preliminary discussion, open to the public, that would explore these issues along with the City's actuaries, before any formal negotiation process would begin.

Please let us know how you would like proceed.

Thank you,

Vera Todorov
Senior Deputy City Attorney

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