



JAN I. GOLDSMITH
SAN DIEGO CITY ATTORNEY

February 16, 2012

Via U.S. Mail and Facsimile Transmission

M. Suzanne Murphy, General Counsel
State of California
Public Employment Relations Board
1031 18th Street
Sacramento, California 95811-4174
(916) 327-6377

Dear Ms. Murphy,

This will acknowledge receipt of your February 10, 2012 letter informing the City of San Diego (City) that the Public Employment Relations Board (PERB) will, by direction of the Board, initiate a lawsuit against the City and expedite administrative proceedings.

As you know, we have not been provided a hearing. We were given 48 hours to provide a written response to the labor union's charges. Apparently, you and possibly others met, with the PERB Board in our absence and without our opportunity to be heard and convinced them that the City committed an unfair labor practice and that injunctive relief was required.

The purpose of this letter is to explain why your hasty action should be reconsidered. What's more, we object to any administrative proceedings given the fact that the Board has been tainted with bias (as has that process) given the fact that you and the Board are now our adversaries.

1. This case has no merit

As you correctly point out in your Complaint against the City, under the *Seal Beach* decision, the City would be required to meet and confer with our labor unions before it could propose Charter amendments that affect matters within the scope of representation. Never in the history of this state, however, has there ever been a requirement to meet and confer over a citizens' initiative placed on the ballot by voter signatures.

I found it telling that the Complaint you filed in San Diego Superior Court omitted the fact that proponents of this initiative obtained 116,000 signatures of registered voters which qualified the initiative for the ballot. Why did you omit this fact from your Complaint?

As you know, a citizens' initiative must go on the ballot as presented. There is nothing that the City could change. There is nothing to meet and confer about at this point. If it is adopted by the voters, the City would meet and confer on impacts.

While ignoring the fact that 116,000 signatures were obtained, your Complaint appears to allege that the initiative is really a City-sponsored initiative because of the Mayor's support. You attach a series of newspaper articles as proof of the Mayor's support.

You have missed the fact that under our form of government, the Mayor cannot act for the City in proposing a Charter amendment. Only the City Council can do that. I have explained that in my declaration, a copy of which is attached.

In addition to my declaration, I have enclosed a copy of Council President Tony Young's declaration in which he states that neither he nor the City Council has proposed the initiative and that it is being placed on the ballot due to a citizen initiative petition and not as a proposal of the City Council. My declaration reiterates that.

What we have here is a Mayor supporting a citizens' initiative - a Mayor who has no authority to place the initiative on the ballot. He doesn't even have a vote on it. He has done no more than other mayors and governors have done to express their views. Indeed, Governor Brown - who appointed you to your office last year - is currently doing the same thing in promoting a tax increase initiative. He is doing that to end around the Legislature where tax increases require a 2/3's vote under the Constitution.

You are going after San Diego in order to get a citizens' initiative off the ballot without any legal basis. We ask that you stop this frivolous lawsuit. At the very least, I would like the opportunity to meet with your Board before you proceed so that they have a clear understanding as to what they are really being pushed and rushed into.

2. The Administrative Proceedings

As noted above, you have compromised the integrity of the administrative process by taking an adversarial position and meeting ex parte with the PERB Board to prejudice members of the Board. We ask that you cease and desist from further administrative proceedings.

An example of this prejudice arising out of the adversarial position you have taken is the Notice of Informal Conference we received for a settlement conference pursuant to CFR 32650. This Notice was issued by one of your attorneys - our opposing counsel - instructing us to attend a settlement conference in Glendale, setting forth certain conditions and stating that we "should be prepared to reach a settlement agreement...."

This is not a typical unfair labor charge matter. You and your staff of attorneys are our adversaries - opposing counsel - and the PERB Board is our opposing party in litigation. It is indicative of the prejudice that we are being directed to do things by our opposition.

3. Settlement

Obviously, the City cannot negotiate with labor unions over changes in a citizens'

initiative. The law is very clear that the City must place a citizens' initiative on the ballot as presented.

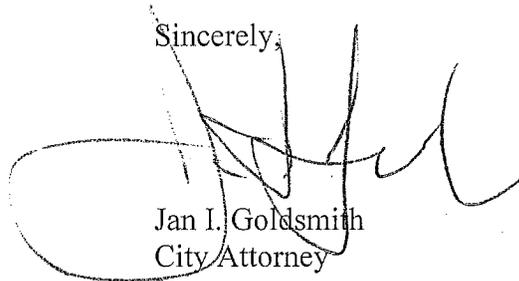
However, my declaration describes our efforts last year, with unanimous consent of the City Council, to negotiate through mediation pension reforms and settlement of on-going litigation. Unfortunately, after a few months of effort, the discussions did not result in an agreement to mediate. But, as set forth in my declaration and the attached letter as Exhibit D, I left the door open for future efforts. No one took me up on that.

Unfortunately, it appears to me that the labor unions are more interested in stopping a citizens' initiative than seriously negotiating changes to the pension system. Had there been interest in the latter, I would have been contacted. Nevertheless, the door remains open to discuss these issues, but I cannot under the law change a citizens' initiative.

I ask that you refrain from meddling in San Diego as this lawsuit is little more than an attempt to get what some consider to be a bad initiative off the ballot. It would be an abuse of your and the Board's authority to use your positions for such a cause. Tell the labor unions if they want to negotiate they should follow up on my letter as the door remains open. But, please tell them that PERB is not going to take sides on a local citizens' ballot initiative as that would be an inappropriate use of state funds.

Thank you for your anticipated reconsideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jan I. Goldsmith', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the beginning.

Jan I. Goldsmith
City Attorney

JIG:cbs

cc: Valerie Pike Racho, Esq. *(via facsimile transmission)*
Wendy L. Ross, Esq. *(via facsimile transmission)*
Honorable Mayor Sanders *(via electronic mail)*
Honorable City Council Members *(via electronic mail)*
Jay Goldstone, Chief Operating Officer *(via electronic mail)*
Andrea Tevlin, Independent Budget Analyst *(via electronic mail)*
Scott Chadwick, Director Labor Relations *(via electronic mail)*
Andrew Jones, Exec. Assistant City Attorney *(via electronic mail)*
Don Worley, Assistant City Attorney *(via electronic mail)*
Mary Jo Lanzafame, Assistant City Attorney *(via electronic mail)*
Joan Dawson, Deputy City Attorney *(via electronic mail)*