

ANDREW JONES
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY JO LANZAFAMEE
ASSISTANT CITY ATTORNEY

DONALD R. WORLEY
ASSISTANT CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
JAN I. GOLDSMITH
CITY ATTORNEY

CIVIL LITIGATION DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 533-5800
FAX (619) 533-5856236-7215

June 25, 2012

Donn Ginoza
Administrative Law Judge
Public Employment Relations Board
San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2512

Re: *San Diego Municipal Employees v. City of San Diego*
Unfair Practice Charge No. LA-CE-746-M
Deputy City Attorneys Association v. City of San Diego
Unfair Practice Charge No. LA-CE-752-M
AFSCME Local 127 v. City of San Diego
Unfair Practice Charge No. LA-CE-755-M
San Diego City Firefighters Local 145 v. City of San Diego
Unfair Practice Charge No. LA-CE-758-M

Dear Judge Ginoza:

The City has received your Notice of Formal Hearing on the Firefighters Local 145 Unfair Practice Charge (UPC).

The Court of Appeal's decision on the writ of mandate filed by the Municipal Employees Association (MEA) to overturn the Superior Court's stay on administrative proceedings at PERB on the MEA matter is not yet final in that court. While the City is considering its options in response, we have nonetheless calendared the hearing dates for the Local 145 matter and are preparing to go forward.

The undersigned will be lead counsel for the City at the hearings and may be joined by Tim Yeung.

The other three unions who have filed UPCs have requested consolidation with the Local 145 case. The City will no longer object to consolidation, provided that the other parties commit that consolidation will not lengthen the hearing.

The City requests that you set aside the first scheduled hearing day for motions, which for the City will include:

1. City's Motion to Dismiss, which the City will augment with supplemental briefing.
2. City's Motion on Limitation of Remedy
3. City's New Motion to Quash Subpoenas (which we anticipate will be reissued) or, in the alternative, Motion for Protective Order to limit inquiries and document production into First Amendment protected areas of speech and contact identity.

Note: This motion needs to be heard in advance to give the subpoenaed individuals an opportunity to go to court to protect their Constitutional rights.

4. In limine motions regarding the scope of evidence and testimony. City needs to know in particular the legal standards by which the ALJ will judge whether the initiative is a "sham" or "nominal" and whether the proponents were "straw men" such that the initiative is shorn of Constitutional protections. We need to have what amounts to "jury instructions" to determine the relevance of the evidence.

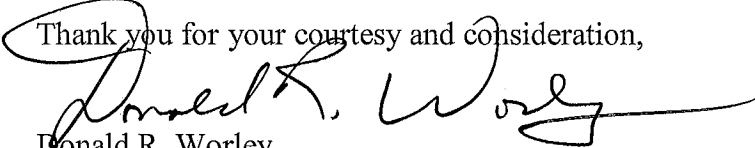
[We will ask that the unions make an Offer of Proof at the outset and that the testimony be at least limited to the Offer and not degenerate into a "fishing expedition."]

As a further procedural matter, we request that you order that only one union attorney (there will be three firms representing four unions, if the matters are consolidated) be permitted to question a witness on direct or cross-examination, and only one attorney be permitted to object to the questioning of a witness. This should also be a condition of consolidation.

Will the hearing be transcribed by a court reporter in due course, or do we need to make private arrangements?

Finally, for the convenience of the parties, witnesses, and counsel, City requests that you consider holding the hearings in San Diego, rather than Glendale, where we understand that facilities may be cramped for a hearing with four parties and their attorneys and witnesses. City will make appropriate arrangements for a hearing venue, which may be an empty courtroom.

Thank you for your courtesy and consideration,


Donald R. Worley
Assistant City Attorney
City of San Diego

DRW:gb

cc: Ann M. Smith, Attorney for San Diego Municipal Employees Association
Fern M. Steiner, Attorney for San Diego Firefighters, Local 145
Constance Hsiao, Attorney for AFSCME Local 127
Adam Chaikin, Attorney for Deputy City Attorneys Association
Timothy G. Yeung, Attorney for City of San Diego

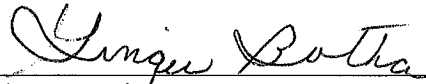
PROOF OF SERVICE

I declare that I am a resident of or employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my business is Office of the City Attorney, 1200 Third Avenue, Suite 1100, San Diego, CA 92101.

On June 25, 2012, I served the Letter regarding Case No. LA-CE-746-M on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with first class postage or other costs prepaid.

Timothy G. Yeung, Attorney Renne, Sloan, Holtzman & Sakai 428 J Street, Suite 400 Sacramento, CA 95814	Ann M. Smith, Attorney Tosdal, Smith, Steiner & Wax 401 West A Street, Suite 320 San Diego, CA 92101
Fern M. Steiner, Attorney Tosdal, Smith, Steiner & Wax 401 West A Street, Suite 320 San Diego, CA 92101	Constance Hsia, Attorney Rothner, Segal & Greenstone 510 S. Marengo Avenue Pasadena, CA 91101
Adam Chaikin, Attorney Olins Riviere Coates and Bagula 2214 Second Avenue San Diego, VA 92101	

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 25, 2012, at San Diego, California


Ginger Botha