

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 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

July 6, 2012

Via Fax and U.S. Mail

Donn Ginoza  
Administrative Law Judge  
Public Employment Relations Board  
San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514

RE: *San Diego Municipal Employees' Association v. COSD*  
(PERB Case No. LA-CE-746-M)  
  
*Deputy City Attorneys Association of San Diego v. COSD*  
(PERB Case No. LA-CE-752-M)  
  
*AFSCME, AFL-CIO Local 127 v. COSD*  
(PERB Case No. LA-CE-755-M)  
  
*San Diego City Firefighters Local 145 v. COSD*  
(PERB Case No. LA-CE-758-M)

Dear Judge Ginoza:

With regard to your letter to counsel of June 29, 2012, the city respectfully offers the following comments:

1. As provided by Government Code section 3509(b), “[t]he board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter [the MMBA].” The City has consistently maintained that there is no existing judicial interpretation that applies the MMBA’s meet and confer requirement to a citizens’ initiative, or any which applies “agency” principles to an initiative such that it becomes a “nominal” or government-sponsored initiative to which meet and confer requirements attach. Due process demands that City know what legal standards apply in order to properly prepare for the hearing. Accordingly, City, with respect, must object to the Judge’s decision not to announce those standards or demand an offer of proof.

2. The current time estimate of four days was made by MEA, confirmed by the same counsel for the Local 145 UPC. The City cannot know what additional time, if any, will be required by the consolidation. Naturally, City’s case depends in part on the evidence presented by the unions. In that regard, without knowing what legal standards will be applied, it cannot at this time “revise” the estimate in any meaningful way.

3. It is unclear to the city what the "unilateral charge allegation" is in the AFSCME Local 127 UPC. If that refers to the allegation that the initiative somehow violates a memorandum of understanding (MOU), City maintains that PERB has no jurisdiction to determine breaches of MOUs.

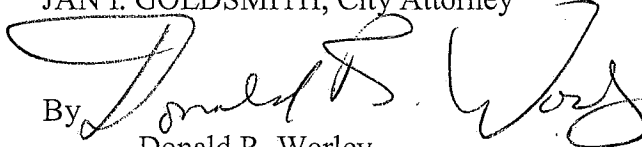
4. City regrets that you have already ruled on City's Motion to Dismiss in MEA's Case No. LA-CE-746-M. City had planned to shortly file a Consolidated Motion to Dismiss in all of the cases. The previous Motion was predicated on lack of authority to keep the initiative off the ballot, and the facts have now changed. Also, we have developed pertinent new arguments. We ask that you consider that there is good cause to apply the revised arguments to the MEA case, as well.

5. City objects to any pre-hearing conferences, wherein the ALJ makes rulings, without some record.

6. City appreciates the information on the transcript. However, City may have its own reporter, for instance, to provide dailies of the testimony.

Sincerely yours,

JAN I. GOLDSMITH, City Attorney

By 

Donald R. Worley  
Assistant City Attorney

DRW:slc

cc: Constance Hsiao, Esq. (via email)  
Timothy Yeung, Esq. (via email)  
Fern Steiner, Esq. (via email)  
Ann M. Smith, Esq. (via email)  
Adam Chaikin, Esq. (via email)