

October 1, 2013

VIA EMAIL [RUNGISAUSTRIS@AOL.COM] AND FIRST CLASS MAIL

Austris Rungis
IEDA
2200 Powell Street, Suite 1000
Emeryville, CA 94608

Re: City of Vallejo and the Vallejo Police Officers Association

Dear Austris:

On behalf of the Vallejo Police Officers Association (“VPOA” or “Association”), please accept this correspondence in response to your letter dated September 19, 2013, wherein the City of Vallejo (“City”) prematurely declared impasse in negotiations with the VPOA, and submitted its most recent proposal, which the City has reprehensibly characterized as its “last best and final offer.” Given the bargaining history between the parties, the City’s premature declaration of impasse constitutes nothing more than a continuation of the questionable tactics, strategies and draconian positions employed by the City throughout these negotiations.

As you are aware, the duty to bargain does not come to a sudden conclusion based upon the declaration of impasse by either party. Further, “[a]n impasse does not constitute a license to avoid the statutory obligation to bargain collectively where the circumstances which led to the impasse no longer remain in status quo.” (*Kit Manufacturing Co., Inc.* (1962) 138 NLRB 1290, 1294.) Accordingly, it is well-established that anything that creates a new possibility of fruitful discussion – including bargaining concessions, or the mere passage of time - breaks an impasse. (*See Gulf States Mfg. Inc. v. NLRB*, 704 F.2d 1390, 1399 (5th Cir. 1938))

In the present situation, the City and the VPOA have not conducted formal negotiations – and thus, have not exchanged information or proposals – for well *over two months*. The parties last met on July 18, 2013, at which time the Association provided the City with a Comprehensive Economic Counter Proposal *that would have provided the City with immediate cost savings totaling in the millions of dollars*. Despite the VPOA’s generous proposal, the City has inexplicably failed to respond to the Association’s offer, resulting in the loss of hundreds of thousands of dollars in potential cost savings that the City could have used to address any number of needs, including the filling of at least ten (10) vacancies in the Vallejo Police Department (positions that were misleadingly promised to the citizens of Vallejo in order to justify the City’s Measure B sales tax revenue). Since that time, despite the lack of any formal

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response by the City, the VPOA has clearly and unequivocally indicated that it would be willing to consider additional cost-saving measures, but that it would first require a response from the City, including an analysis of the prospective cost-savings provided in the Association's proposal, to be prepared by the City's financial team (including its actuary). Moreover, given that your letter acknowledges "*improvements in the City's financial condition*" during the last year – improvements that the City has thus far refused to acknowledge at the bargaining table – it is evident that the City has set aside the best interest of the citizens of Vallejo, and is continuing to withhold information and disregarding its statutory obligation to meet and confer in good faith (*Stockton Unified School District* (1980) PERB Decision No. 0143-E).

Given the timing of the City's declaration of impasse, it is now quite clear that the City's actions constitute a direct response to the Association's inquiry as to the impropriety and influence of Councilmember Stephanie Gomes on these negotiations. Indeed, it speaks to the influence Ms. Gomes has had in these negotiations from the very beginning, and her desire to redefine labor-relations between the City and the VPOA during the limited period of time remaining in her term in office.

As you know, your impasse letter was not sent until *two days after* counsel for the VPOA sent correspondence to the City Attorney demanding that the City recognize Councilmember Gomes' conflict of interest, and preclude her from having any further involvement in these contract negotiations. Given the City's financial misrepresentations, the inexplicable delay in responding to the VPOA's proposal, and the timing of the City's declaration of impasse, it is clear that Councilmember Gomes' influence continues to derail these negotiations. While the City's approach thus far may serve the desire of some within City Hall to inflict economic devastation upon the VPOA and its individual members – indeed, there can be no other explanation as to why the City would seek to recover \$4.5 million in concessions from the Association, and only \$800,000 from the City's three other bargaining units (*Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal. App. 3d 416; *Carlsbad*; *State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S.) – the citizens of Vallejo continue to suffer the wrath of the City's arrogance and ineptitude, as the City continues to flounder in its ability to recruit and retain dedicated men and women to risk their lives in the profession of law enforcement. As the City continues down the path of self-destruction, even the dedicated personnel that currently sacrifice their lives on a daily basis will be compelled to reconsider their service to the City of Vallejo out of a sense of self-preservation, as the dangerous working conditions will only continue to spiral out of control.

With respect to the content of the City's proposal, it must be noted that the City's action has served no other purpose than to document its own bad faith, as the conditional terms set forth in the City's "last best and final offer" constitute regressive bargaining (*Pajaro Valley Unified School District* (1978) PERB Decision No. 0051-E), and include at least two provisions which violate the vested rights of existing VPOA members – terms that the Association has cautioned the City would constitute a predictably unacceptable proposal if re-submitted (*San Bernardino City Unified School District* (1998) PERB Decision No. 1270-E). Specifically, the City has

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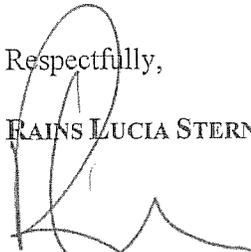
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sought to unilaterally violate Association members' vested right to protected retirement benefits (See e.g. *Int'l Bhd. v. City of Redding*, 210 Cal. App. 4th 1114 (2012), reh'g denied (Nov. 30, 2012), review denied (Jan. 16, 2013)), and the value of accrued sick leave (See e.g. *Deisenroth v. City of San Jose*, Case No. 1-12-CV-224197 (April 4, 2013)). Further demonstrating just how recklessly your client has proceeded throughout these negotiations, the City has even proposed terms that unlawfully void the express terms of the Supplemental Agreement negotiated by and between the City and the Association following the City's bankruptcy in 2008. As certain terms explicitly survive the term of the Memorandum of Understanding, and others have been characterized as "irrevocable", the City is wantonly disregarding its legal obligations, thereby furthering the sentiment that the City's economic future is destined for failure. Sadly, the City's actions in seeking to void the terms provided in the Supplemental Agreement speak to its reliability with all creditors – if the City is willing to violate the terms negotiated with the first creditor to resolve their dispute during the bankruptcy proceedings, it will be hard pressed to find any other creditor to consider engaging in any financial relationship with the City of Vallejo moving forward.

In light of the dire consequences that will directly result should the City proceed with its ill-conceived plan to implement the terms set forth in its recent proposal – including the threat of harm to the public that will result from the City's inability to provide essential services following the exodus of officers from an already depleted Vallejo Police Department – the VPOA hereby demands that the City immediately rescind its declaration of impasse, and withdraw its predictably unacceptable proposal. Accordingly, please provide this office with written notice of the City's intentions by the close of business on Friday, October 4, 2013. Should the City fail to comply with the Associations demands as set forth in this correspondence, the VPOA will have no option but petition the Court to salvage these negotiations, and indeed, the security of the citizens of Vallejo.

Respectfully,

RAINS LUCIA STERN, PC


Rockne A. Lucia, Jr.

RAL:bg

cc: Mat Mustard
Charles Sakai