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Scott Chadwick  
Human Resources Director  
City of San Diego  
1200 Third Avenue, Ste. 1316  
San Diego, CA 92101-3869

Re: MEA's Demand Regarding DROP

Dear Scott:

This morning MEA representatives were summoned to a meeting with the City Attorney with no prior notice regarding the subject matter. At 10:30 a.m. today, we were informed that the City Attorney had concluded – and announced publicly – that the Charter-mandated vote which took place in 1997 related to the DROP implementation ordinance had certain deficiencies which he believes have the legal effect – now twelve (12) years later – of the DROP benefit “not being in effect” – at least not for current employees who have not yet entered DROP.

MEA reacted with justifiable outrage over this announcement coming as it did with the implied consequence that SDCERS should not or will not be administering the DROP benefit for new enrollees hereinafter.

I reiterate here what MEA conveyed today in its meeting with the City Attorney: any change in the DROP benefit is *unlawful* – period. The City's defiance in making a change despite the facts and law will not only break the law but will also represent an insult to every hard-working MEA-represented employee who recently participated in a difficult process with this City whereby they agreed to “share the pain” in these tough economic times. The City's decision to create fear and additional trauma for these employees on the flimsy “gotcha” analysis presented today is unforgivable and irresponsible.

MEA demanded this morning that the City immediately clarify its position with regard to this matter by stating unequivocally to SDCERS that the City, as plan sponsor, is not asking or suggesting that SDCERS, as plan administrator, stop processing new applications for employees who elect to enter DROP, or otherwise to stop its customary implementation

of these DROP provisions in the SDMC – and, in fact, to inform SDCERS in light of the publicity given to this issue, that it does not want SDCERS to alter its administration of DROP for MEA-represented employees pursuant to the SDMC in any respect.

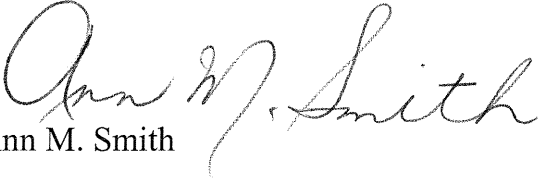
If the City does not do so, the City will be in violation of its legal and contractual duties as follows:

- (1) The City and MEA recently reached a new MOU after bargaining in good faith and reaching appropriate concessions related to the current unprecedented recession;
- (2) This new MOU has already been approved as to all its principle terms by the City acting through the City Council as its legislative body;
- (3) Although the City proposed early in the negotiations process that DROP be eliminated effective July 1, 2009, MEA strenuously opposed this proposal and emphasized that DROP is a vested retirement benefit protected by the Constitution against impairment and that it cannot be bargained away;
- (4) The City withdrew its demand for MEA to agree to an elimination of DROP and this proposal was *not* included in the City's "last, best and final offer."
- (5) MEA-represented employees ratified this new MOU – which included the precise same DROP benefit which had been in effect since April 1, 1997.
- (6) The City may not unilaterally change any term or condition of employment or alter any benefit and may not repudiate the terms of the new MOU which has already been approved by the Council and ratified by the MEA membership;
- (7) The language of Charter section 143.1 does not lend itself to a single interpretation as the City Attorney now suggests, and any new interpretation of this language cannot be applied so as to reverse the actions on which the parties justifiably relied during the past twelve (12) years;
- (8) If the City wished to argue for a different interpretation and application of Charter section 143.1, the City was duty-bound to have done so (a) on a timely basis and not 12 years later; (b) during the litigation it already conducted challenging the legality of MP 1 (including DROP) and MP 2 on which a judgment was entered against the City on its claims in September 2007; and, (c) before certifying under penalty of perjury to the IRS that DROP is a lawful provision of its pension plan as codified in the SDMC;

- (9) Because of the judgment already entered against the City in its pension take-away case, the City is now barred by principles of *res judicata* from challenging the effectiveness of the DROP Ordinance due to any alleged voting deficiency;
- (10) Even if a colorable argument can be made that the vote which occurred in 1997 failed to comply with the technical requirements of the Charter (which I do not concede), the only logical and lawful solution would be to cure the deficiency by conducting a re-vote because (a) the DROP benefit was lawfully bargained; (b) it was included in MOUs which were made final and binding by lawful action of the City Council; and, (c) it was thereafter embodied in an Ordinance as required by the MOU's implementation provisions, and was duly adopted by a vote of the City Council. Moreover, the Charter provision which requires a vote of plan participants *is protective of employee rights* and cannot and should not be used so as to defeat those rights.
- (11) The City is estopped to deny that Charter section 143.1 was properly interpreted and applied in 1997 when the "majority vote" of plan participants occurred and resulted in the DROP Ordinance taking effect thereafter.

Please inform me in writing by 5:00 p.m. today if the City intends to satisfy MEA's demands in this matter by sending the clarifications to SDCERS as described above, and, if so, provide me with a copy of same.

Sincerely,

  
Ann M. Smith

cc: Mayor Jerry Sanders  
City Attorney Jan Goldsmith  
William Kay, Esq.  
Tony Ruiz, MEA President  
Mike Zucchet, MEA's Acting General Manager