



LOCAL 101
1150 North First Street, Suite 101
San Jose, CA 95112

March 9, 2015

Via Hand Delivery and E-mail

Norberto Duenas, Interim City Manager
CITY OF SAN JOSE
City Manager's Office
200 East Santa Clara Street
San Jose, CA 95113

Re: Measure B

Dear Norberto:

Thank you for your letter dated February 11, 2015. We appreciate the City's willingness and desire to discuss ways to address the challenges and issues resulting from Measure B. We are also interested in finding a solution.

As you are aware, AFSCME has always been willing to work with the City and engage in good faith negotiations to obtain the best contract for our members. We appreciate your recognition of City employee sacrifices, and note that AFSCME members continue to serve San Jose despite those continuing hardships and the professional and personal sacrifices they entail.

To ensure the City and AFSCME members continue forward momentum, there are several concepts that will continue to frame our bargaining stance. Like the City, AFSCME wants San Jose to be able to attract, recruit and retain the very best employees. We too want the City to be competitive, and to return to being the employer of choice in the area. These goals, which are shared by AFSCME and the City, can not be accomplished on the backs of our workers. Indeed, these goals are incompatible with the demand for concessions you have asked from us.

AFSCME represents the largest bargaining unit at the City. We are a majority of the lowest paid workers. We are in every City Department. We include full-time members with benefits, part-time members with partial benefits, and part-time members with no benefits and little-to-no job security. Our diversity reflects the diversity of the City and its residents, and an overwhelming majority of our membership lives and works in San Jose. Like you, we want a better San Jose.

In past negotiations, AFSCME made concessions that were necessary and sought gains we felt the City was able to provide. Indeed, prior to Chuck Reed and the City Council moving forward with their ill-considered Measure B, our bargaining coalition proposed many of the concepts you have now put forward in your February 11, 2015 letter. But as we have said before, when the City begins its negotiations with a pre-determined outcome, the negotiation process is constrained and breaks down. Legally, such an approach is the essence of bad-faith bargaining. Repeating that history will not lead to a better San Jose.

The City legally has the ability to seek and make cuts, provided it has fulfilled its considerable obligations to bargain in good faith pursuant to the MMBA. The 4% cut in pay that you indicate may be implemented, in fact cannot be implemented without first fulfilling the requirement to openly and in good-faith bargain with AFSCME. Accordingly, there is no need for AFSCME to sign a stipulation to delay addressing the issues surrounding Measure B's implementation when there is an opportunity to resolve our differences now. Because PERB will ultimately find the City's imposition of Measure B was made in bad faith, any further efforts on the part of the City to implement Measure B are reckless. Indeed, such efforts will create uncertainty and turmoil, as San Jose will be unable to assess its financial position until these legal disputes have finally played out. That will take some time, as the current and future quo warranto challenges are filed to invalidate Measure B based on PERB's findings, which will also complicate current and future negotiations. Our optimism in our legal position is not born from hubris, but experience. If you review the outcomes of AFSCME's charges and lawsuits against the City over the past three years, in each instance AFSCME has been vindicated.¹ Nonetheless, we believe our members are better served by negotiation, which requires effort on all sides. The past administration was an unwilling partner in that endeavor, to the City's detriment. That administration is no longer here; but we are and will continue to be for the future. We hope this administration will take a more productive approach than the last.

It is 2015, the great recession appears to be behind us, but AFSCME members are still suffering its impact. The approach outlined in your letter -- to extract the savings the City would have achieved from Measure B had Measure B been both legal and lawfully imposed -- is no more than a request to turn back the clock to 2011. It is unrealistic in light of today's circumstances, because it seeks a pre-determined outcome years after the fact. Simply, it is not a proposal to move us forward.

AFSCME agrees that the consequences of Measure B need to be fixed, although we are comfortable with the Superior Court's ruling and look forward to a ruling from PERB which will be followed by additional quo warranto proceedings. In addition to Measure B and its perilous legal status, there are many reasons for us to come together at the table and negotiate in good faith. Let's not lose sight of these reasons, nor let politics dictate a bargaining framework, a tactic that has greatly impeded all of us in the past. Rather let's look to the future and truly move San Jose forward with a solution that benefits the City, the employees, and most-importantly the residents.

We welcome the time to meet to discuss further.

Respectfully,

Yolanda A. Cruz
President
Municipal Employees' Federation
AFSCME Local 101

LaVerne Washington
President
Confidential Employee Organization
AFSCME Local 101

Cc. Teague Paterson
Charles Allen
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¹ We are referring to PERB Cases SF-CE-972-M; SF-CE-945-M; and SF-CE-837-M/SF-CO-255-M; as well as *Deisenroth v. City of San Jose*, Santa Clara County Superior Court Case No. 1-12-CV-224197; *San Jose v. POA, MEF et al.*, U.S.D.C., N.D.Cal., Case No. 5:12-cv-02904-LHK; and *AFSCME Local 101 v. San Jose*, Santa Clara Superior Court No. 1-12-CV-227864.