

1 JOHN McBRIDE, ESQ., SBN 36458
CHRISTOPHER E. PLATTEN, ESQ., SBN 111971
2 MARK S. RENNER, ESQ., SBN 121008
Wylie, McBride, Platten & Renner
3 2125 Canoas Garden Avenue Suite 120
San Jose, CA 95125
4 Telephone: 408.979.2920
Facsimile: 408.979.2934
5 jmcbride@wmprlaw.com
cplatten@wmprlaw.com

6 Attorneys for Plaintiffs and Cross-Defendants Robert Sapien,
7 Mary Kathleen McCarthy, Than Ho, Randy Sekany,
Ken Heredia, Teresa Harris, Jon Reger, Moses Serrano,
8 John Mukhar, Dale Dapp, James Atkins, William Buffington
and Kirk Pennington
9

10
11 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 SAN JOSE POLICE OFFICERS' ASSOCIATION,

14 Plaintiff,

15 vs.

16 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATION FOR THE POLICE AND FIRE
17 DEPARTMENT RETIREMENT PLAN OF CITY OF
SAN JOSE,

18 Defendants.

19
20 and Consolidated Actions

21 CITY OF SAN JOSE,

22 Cross-Complainant,

23 vs.

24 SAN JOSE POLICE OFFICERS' ASSOCIATION, *et*
25 *al.*

26 Cross-Defendants.
27
28

Case No. 1-12-CV-225926
(and Consolidated Actions 1-12-CV-
225928, 1-12-CV-226570, 1-12-CV-
226574, and 1-12-CV-227864)

**DECLARATION OF CHRISTOPHER E.
PLATTEN IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION ON
PLAINTIFFS AND CROSS-
DEFENDANTS ROBERT SAPIEN,
MARY KATHLEEN MCCARTHY, THAN
HO, RANDY SEKANY, KEN HEREDIA
TERESA HARRIS, JON REGER,
MOSES SERRANO, JOHN MUKHAR,
DALE DAPP, JAMES ATKINS, WILLIAM
BUFFINGTON AND KIRK PENNINGTON**

Date: March 5, 2013
Time: 9:00 a.m.
Dept: 8
Judge: Hon. Peter H. Kirwan

1 I, Christopher E. Platten, say:

2 1. I am one of the attorneys for plaintiffs Robert Sapien, et al., Teresa Harris, et
3 al, and John Mukhar, et al. who are or were member of IAFF Local 230, IFPTE Local 21
4 and Operating Engineers Local 3, respectively, unions representing employees of the City
5 of San Jose.

6 2. I represented the San Jose Firefighters Local 230 in a binding interest
7 arbitration proceeding pursuant to San Jose City Charter, Section 1111 with the City of San
8 Jose which took place in June 1997 through the end of 1997. In that proceeding George
9 Rios of the San Jose City Attorney's office represented the City of San Jose.

10 3. I was present at a hearing which took place before the interest arbitration
11 panel on June 5, 1997, in which Mr. Rios made the following statements concerning the
12 1961 Police and Fire Department Pension Plan:

- 13 • Page 24:21 – 25:12

14 "Just a word or two about the Police and Fire Department Retirement
15 Plan.

16 The existing plan is an excellent retirement plan for its members. It is a
17 defined benefit plan, which means that the benefits will be given to the
18 employees.

19 It will be given to the employees even if the amount of money that is
20 contributed by the City or the employees is not enough and is not available at
21 the time that the benefits must be paid. The City will cover those costs if, in
22 fact, that were to happen, and hopefully that never will happen.

23 The plan specifically provides that with regard to prior service costs, if
24 there is a new benefit granted, and that there is a prior service cost with
25 regard to that benefit, that the City must pay the prior service cost 100
26 percent.

27 The City is required to pay at least eight-elevenths of all current
28 service contributions.

1 • Page 26:4-16:

2 Retirement benefits are not like other benefits. They are not like
3 wages. They are not like increased sick leave. They are not like increased
4 vacation days or uniform allowance, and they are not like those benefits,
5 because retirement benefits, once given, can never be taken away. That's not
6 quite absolutely true, because there are some ways to take them away, but
7 you can take them away only if give a comparable benefit.

8 So once a benefit comes into the retirement plan, it becomes a benefit,
9 then it's there, or you're going to have to give them something else in return
10 later on that's comparable to that, so for all practical purposes, it's there
11 forever."

12 Attached hereto as Exhibit 1 are the front pages and pages 24 – 26 of the transcript
13 of that hearing which accurately reflect Mr. Rios's statements.

14 4. In that same interest arbitration Mr. Rios filed with the interest arbitrator and
15 served my office with a copy of the City's Opening Brief in which he made the following
16 statement:

17 • Page 2:10-16

18 "Unlike other benefits, such as salary (which may be linked to inflation
19 or the consumer price index), retirement benefits in a defined benefit plan are
20 not subject to the fluctuating economy. Once a retirement benefit has been
21 installed in the retirement plan, the employee who meets the eligibility
22 requirement has a vested right in the benefit upon retirement and it generally
23 cannot be removed from the plan unless a benefit of equal or greater value is
24 given. Betts v. Board of Administration (1977) 21 Cal.3d 859; Valdes v. Corey
25 (1983) 139 Cal.App.3d 773."

26 Attached hereto as Exhibit 2 are relevant portions of that Opening Brief.

27 5. In his Closing Brief in the same interest arbitration Mr. Rios set forth the
28 following:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Page 2:20-21

"The City is obligated to the huge risk of this defined benefit plan and being solely responsible for prior service costs..."

Attached hereto as Exhibit 3 are copies of relevant portions of that Closing Brief.

6. In a subsequent brief after the arbitration panel awarded its decisions Mr. Rios filed and served another brief in which he stated:

- Page 1:23 – 2:4

"Under the Plan, benefits are funded by contributions from both the City and the members. Member contributions (excluding those for medical coverage) consist solely of 'current service' costs; City contributions consist of 'current service' costs and also 'prior service' costs. Section 3.36.1520 of the San Jose Municipal Code provides that 'current service' costs 'shall not include any amount required to make up any deficit resulting from the fact that previous rates of contribution made by the City and members were inadequate to fund benefits attributed to service rendered by such members prior to the date of any change or rates, ...' Costs related to service rendered prior to the date of any contribution rates changes are allocated to 'prior service' costs which are borne entirely by the City (San Jose Municipal Code Section 3.36.1550)."

Attached hereto as Exhibit 4 are copies of relevant portions of that brief.

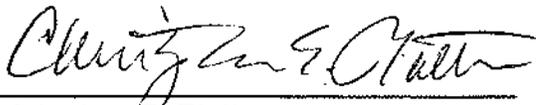
7. In a separate binding interest arbitration pursuant to San Jose City Charter, Section 1111 between Local 230 and the City of San Jose, I attended an arbitration session on June 5, 2007 representing Local 230. Attorney Charles Sakai represented the City. In that hearing Alex Gurza, Director of Employee Relations was asked by the City's Attorney to explain what the SRBR fund (part of the pension plan) was. He outlined what an SRBR was (pgs. 1167-1168). He then concluded by stating "so that is an additional benefit that our pension provides and it was added in 2001." (pg. 1169:4-5)

8. Mr. Gurza also confirmed that the City was the guarantor of the pension fund

1 benefits. Attached as Exhibit 5 hereto are relevant portions of the court reporter's transcript
2 of the proceedings on June 5, 2007 which accurately reflect Mr. Gurza's testimony (pg.
3 1283:5-22).

4 9. In the spring and early summer of 2011, I represented IAFF Local 230, IFPTE
5 Local 21 and OE Local 3 in negotiations with the City of San Jose. As a result of those
6 negotiations each of these unions sustained on behalf of their members a 10% reduction of
7 pay for two years.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed on
9 January 31, 2013, at San Jose, California.

10
11 
12 Christopher E. Platten

13 I:\0230\72256\pnd\motion preliminary injunction\decl platten prel inj.docx
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 IN ARBITRATION PROCEEDINGS PURSUANT TO THE COLLECTIVE
2 BARGAINING AGREEMENT BETWEEN THE PARTIES
3

4
5 COPY

6 In the Matter of a Controversy)
7 between)
8 SAN JOSE POLICE OFFICERS ASSOCIATION)
9 and SAN JOSE INTERNATIONAL ASSOCIATION) VOLUME I
10 OF FIREFIGHTERS,)
11 and)
12 CITY OF SAN JOSE,)

13 BEFORE:

14 The Arbitration Panel:
15 BONNIE G. BOGUE, Attorney at Law
16 DARRELL DEARBORN
17 KEN HEREDIA

18 Location:
19 San Jose Police Officers
20 Association Office
21 1151 North First Street
22 San Jose, California

23 Date: June 5, 1997

24 Time: 10:00 a.m.

25 J. J. Reporting Services

26 28 North First Street, Suite 202
San Jose, California 95113
(408) 298-4040

1 APPEARANCES:

2 ON BEHALF OF THE UNIONS:

3 Attorney for San Jose Police Officers Association:
4 Mr. John R. Tennant, Esquire
5 CARROLL, BURDICK & McDONOUGH, Attorneys at Law
6 44 Montgomery Street, Suite 400
7 San Francisco, California 94104

8 Attorney for San Jose International Association of
9 Firefighters:

10 Mr. Christopher E. Platten, Esquire
11 WYLIE, McBRIDE, JESINGER, SURE & PLATTEN
12 101 Park Center Plaza, Suite 900
13 San Jose, California 95113

14 ON BEHALF OF THE EMPLOYER:

15 Attorney for the City of San Jose:
16 Mr. George Rios, Esquire
17 CITY OF SAN JOSE, OFFICE OF CITY ATTORNEY
18 151 West Mission Street
19 San Jose, California 95110

20 ALSO PRESENT:

21 UNION EMPLOYEE REPRESENTATIVES:

22 JIM TOMAINO, President of San Jose Police
23 Officers Association

24 RANDY SEKANY, President, San Jose firefighters

25 DOUG STEWART, San Jose firefighters No. 230

26 JEFF RICKETTS, CFO, San Jose Police Officers
Association

SUSAN TAMAYO, Legal Assistant, CARROLL, BURDICK
& McDONOUGH

MATT ELVANDER, San Jose Police Officers
Association

ROBERT SAPIGN, San Jose Fire Fighter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EMPLOYER REPRESENTATIVES:

ALEX GURRA, Executive Assistant, Employee Relations

LYNN BOLAND, Employee Relations Officer

TIMOTHY S. SPANGLER, Deputy City Attorney

1 MR. RIOS: If you'll just
2 give me a minute.

3 ARBITRATOR BOGUE: Sure.

4 MR. RIOS: I'll go ahead and
5 make an opening at this time.

6 ARBITRATOR BOGUE: Okay.

7 OPENING STATEMENT ON BEHALF OF THE CITY

8 MR. RIOS: First of all, I
9 would like to start with the issue of the fact that the
10 City is not making an ability-to-pay argument.

11 And in that regard, I would just like to note that
12 there is fairly clear authority that the fact that we are
13 not making an ability-to-pay argument is not the
14 determinative factor in deciding whether benefits should
15 or should not be granted.

16 The Arbitration Board is required to look at the
17 particular benefit that is sought and to determine with
18 regard to all of the factors in deciding whether or not to
19 grant that particular benefit, whether or not that benefit
20 is justified and is warranted.

21 Just a word or two about the Police and Fire
22 Department Retirement Plan.

23 The existing plan is an excellent retirement plan for
24 its members. It is a defined benefit plan, which means
25 that the benefits will be given to the employees.

26 It will be given to the employees even if the amount

1 of money that is contributed by the City or the employees
 2 is not enough and is not available at the time that the
 3 benefits must be paid. The City will cover those costs
 4 if, in fact, that were to happen, and hopefully that never
 5 will happen.

6 The plan specifically provides that with regard to
 7 prior service costs, if there is a new benefit granted,
 8 and that there is a prior service cost with regard to that
 9 benefit, that the City must pay the prior service cost 100
 10 percent.

11 The City is required to pay at least eight-elevenths
 12 of all current service contributions.

13 I find it very difficult to believe that Mr. Tennant
 14 can say that there may be a point that the City would not
 15 have to pay any contribution. Very difficult for me the
 16 believe that, but be that as it may.

17 Another point about the retirement system, and that
 18 is the retirement system is already set up to deal with
 19 inflation. If there are high inflation years, the City
 20 salaries are going to increase.

21 Their benefits at retirement are based upon final
 22 average salary, so they are going to get something based
 23 on their salary at the time they retire, not based upon
 24 their salary now and what they're contributing now, unless
 25 now is the point that they're going to retire.

26 In addition, the City's plan has a 3 percent cost of

1 living increase maximum for retirees, based on the
2 consumer price index, that is also available to deal with
3 inflation after they retire.

4 Retirement benefits are not like other benefits.
5 They are not like wages. They are not like increased sick
6 leave. They are not like increased vacation days or
7 uniform allowance, and they are not like those benefits,
8 because retirement benefits, once given, can never be
9 taken away. That's not quite absolutely true, because
10 there are some ways to take them away, but you can take
11 them away only if give a comparable benefit.

12 So once a benefit comes into the retirement plan, it
13 becomes a benefit, then it's there, or you're going to
14 have to give them something else in return later on that's
15 comparable to that, so for all practical purposes, it's
16 there forever.

17 Other benefits, for example, wages, if we were to
18 have a catastrophe and not have the money to pay a certain
19 wage level of our employees, those benefits could be
20 reduced. So retirement benefits are really a much
21 different animal, a different kind of benefit.

22 And because we are negotiating retirement benefits
23 and their vested benefits, this arbitration really is
24 about how much more are we going to give?

25 It isn't about, you know, a give-and-take process,
26 you know, what is the City going to get versus what are

EXHIBIT 2

1 JOAN R. GALLO, City Attorney (#65825)
2 GEORGE RIOS, Assistant City Attorney (#77908)
3 TIMOTHY S. SPANGLER, Deputy City Attorney (#168163)
4 Office of the City Attorney
5 151 West Mission Street
6 San Jose, California 95110
7 Telephone: (408) 277-4454

COPY

Attorneys for CITY OF SAN JOSE

7 IN RE: ARBITRATION OF POLICE AND FIRE
8 RETIREMENT

14
15 **CITY OF SAN JOSE'S OPENING BRIEF**

1 quo. (See Exhibit "A", Brand Award, pages 8-9.¹) Moreover, according to the Brand
2 Award, "[t]he quantum of proof necessary varies with the impact of the proposed
3 change, the cost (or savings) associated with the change, and factors which mitigate
4 these costs or savings". (Exhibit "A", page 8.) Further, Brand stated that "[t]he greater
5 the magnitude and unmitigated cost of a proposed change, the more proof necessary to
6 justify the change". (Exhibit "A", pages 8-9.) Due to the magnitude of several of the
7 changes in the retirement benefits advocated by the UNIONS, the burden of proof on
8 these issues must be carefully weighed in this matter.

9 **3. Retirement Benefits Are Unique And Must Be Carefully Considered.**

10 Unlike other employment benefits, such as salary (which may be linked to
11 inflation or the consumer price index), retirement benefits in a defined benefit plan are
12 not subject to the fluctuating economy. Once a retirement benefit has been installed in
13 the retirement plan, the employee who meets the eligibility requirements has a vested
14 right in the benefit upon retirement and it generally cannot be removed from the plan
15 unless a benefit of equal or greater value is given. Betts v. Board of Administration
16 (1977) 21 Cal.3d 859; Valdes v. Corey (1983) 139 Cal.App.3d 773. Therefore,
17 retirement benefits must be awarded cautiously. When budgetary constraints require, a
18 public agency may choose not to raise salaries (or even to decrease salaries if
19 necessary). However, such cost-cutting measures cannot similarly be undertaken with
20 respect to retirement benefits. Thus, a retirement plan that is blindly generous to
21 retirees could effectively cripple the CITY's budget in the event of an economic
22 downturn.

23 **B. The UNIONS Should Not Be Awarded Any Cost Benefits.**

24 In connection with prior negotiations between the CITY and the UNIONS,
25 including recent negotiations over the regular (non-retirement) Memorandum of
26

27 ¹ Pursuant to Christopher Platten's letter of September 5, 1997, the UNIONS have no objection to the
28 submission of the Norman Brand arbitration award as an additional exhibit in these proceedings. The
award is attached hereto as Exhibit "A".

EXHIBIT 3

1 JOAN R. GALLO, City Attorney (#65875)
2 GEORGE RIOS, Assistant City Attorney (#77908)
3 TIMOTHY S. SPANGLER, Deputy City Attorney (#168163)
4 Office of the City Attorney
5 151 West Mission Street
6 San Jose, California 95110
7 Telephone: (408) 277-4454

COPY

Attorneys for CITY OF SAN JOSE

7 IN RE: ARBITRATION OF POLICE AND FIRE
8 RETIREMENT

15 **CITY OF SAN JOSE'S REPLY BRIEF**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **condition of the City. However, as discussed in detail in the CITY's Opening Brief (at**
2 **pp. 11-12), Mr. Lowman did not take an actuarially-sound approach in arriving at his**
3 **conclusions. Briefly stated, in arriving at his conclusion that the CITY's contribution rate**
4 **will go down by up to 6% following the next valuation, Lowman relied primarily on the**
5 **risky and speculative practice of considering only one factor, i.e. predicted investment**
6 **returns. (See Johnson Testimony, Vol. IV, p. 93.)**

7 **Therefore, despite the UNIONS' characterization, Mr. Johnson clearly does not**
8 **"essentially concur" with Lowman's assessment regarding future contribution rates. The**
9 **UNIONS "cut and paste" Mr. Johnson's testimony to serve their purposes. The full text**
10 **of the portion of Mr. Johnson's testimony quoted by the UNIONS is contained in Table 1**
11 **attached hereto. This table sets forth numerous instances in which the UNIONS have**
12 **mischaracterized the evidence in this matter.**

13 **In any event, the contribution rates are independently set by the Retirement**
14 **Board, not by the CITY, and will only be modified based on a full actuarial valuation of**
15 **all relevant factors by the Retirement Board's own actuarial firm. (Overton Testimony,**
16 **Vol. III, p. 129:8-12; J 10, pp. 14-15; Johnson Testimony, Vol. IV, p. 94:10-12.)**

17 **With respect to the CITY's past contribution rates, the UNIONS misstate the**
18 **facts. The rates were increased in 1992 -- (a mere 5, as opposed to 15, years ago).**
19 **(C 9a.) Further, the CITY's unmatched payments for prior service costs for the fund**
20 **exceeded \$45,000,000 through 1990. (C 10.) The CITY is obligated to the huge risk of**
21 **this defined benefit plan and being solely responsible for prior service costs, with no**
22 **concurrent risk undertaken by its members, thus it is understandable that it is the CITY,**
23 **through reduced prior service cost payments, that gets the credit of any actuarial**
24 **surplus generated by the Plan. (See Kagel Award.)**

25 **Since the CITY acts as a guarantor to the Retirement Plan to ensure the benefits**
26 **to the members in good times and in bad, the current value of Plan assets are at all**
27 **relevant to the issues before the Arbitration Board.**

28

EXHIBIT 4

1 JOAN R. GALLO, City Attorney (#65875)
2 GEORGE RIOS, Assistant City Attorney (#77908))
3 TIMOTHY S. SPANGLER, Deputy City Attorney (#168163)
4 Office of the City Attorney
5 151 West Mission Street
6 San Jose, California 95110
7 Telephone: (408) 277-4454

COPY

8 Attorneys for CITY OF SAN JOSE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN RE: ARBITRATION OF POLICE AND
FIRE RETIREMENT BENEFITS

CITY OF SAN JOSE'S OPENING
BRIEF RE: COST OF RETROACTIVE
FUNDING OF THE 80% FINAL
AVERAGE SALARY BENEFIT

I. INTRODUCTION

In the Decision of the Board of Arbitration dated November 17, 1997, a majority of the Board accepted the Unions' proposal to increase the maximum benefit payable from the Police and Fire Department Retirement Plan (the "Plan"). The Board awarded an increase from 75% of final average salary ("FAS") to 80% of FAS retroactive for all persons who retired on or after February 4, 1996.

Under this award, all Plan members who retire between February 4, 1996, and the effective date of the Plan amendment implementing the benefit increase will be eligible to receive a higher retirement benefit. However, the passage of more than two years between those two dates will result in inequitable funding of the retroactive aspect of this benefit.

Under the Plan, benefits are funded by contributions from both the City and the members. Member contributions (excluding those for medical coverage) consist solely of "current service" costs; City contributions consist of "current service" costs and also "prior service" costs. Section 3.36.1520 of the San José Municipal Code provides that "current service" costs "shall not include any amount required to make up any deficit resulting from the fact that previous rates of contribution made by the City and members

1 were inadequate to fund benefits attributable to service rendered by such members
2 prior to the date of any change of rates," Costs related to service rendered prior to
3 the date of any contribution rates changes are allocated to "prior service" costs which
4 are borne entirely by the City (San José Municipal Code Section 3.36.1550).

5 Because Plan members will not have made the "current service" contributions
6 they would have made had the benefit increase and corresponding contribution rate
7 increases been in place as of February 4, 1996, those costs will be shifted to the City,
8 unless an alternative funding mechanism is made a part of the award. According to
9 the actuarial study (which is based upon the 1995 City payroll), the contributions
10 members would have made during this almost two year period is approximately
11 \$600,000.¹ The total amount of these unpaid contributions increases as the period
12 between February 4, 1996, and the effective date of the benefit enhancement
13 lengthens. Thus, without an alternative funding mechanism, the City will pay a
14 disproportionate share of the cost attributable to the retroactivity of the benefit.

15 Therefore, the City requests that the Board include in the award a provision that
16 the amount of the contributions that would have been made by the members had the
17 80% of FAS benefit been implemented and the contribution rates adjusted as of
18 February 4, 1996, be borne by the members and not included in the City's prior service
19 contribution rate, and a provision that the Plan amendment implementing the 80% of
20 FAS benefit so provide. The amount of such contributions will be determined on an
21 actuarial basis and be amortized over the remaining amortization period for the prior
22 service costs.

23 As discussed in detail below, the proposed clarification regarding the retroactivity
24 of the proposed benefit corrects a fundamental inequity and is supported by the
25

26
27 ¹ This figure is derived by multiplying \$109 million (1995 payroll) and .27 (employees' cost of the 80% FAS
28 benefit) and then multiplying the sum by two years (the retroactive period). The employees' cost of the
80% FAS appears on Joint Exhibit 9. It should be noted that the CITY's payroll is now, of course, higher
than the 1995 payroll and, as a result, the actual figure is higher than \$600,000.

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

ON BEHALF OF THE UNION:

WYLIE, McBRIDE, JESINGER, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, California 95125
(408) 979-2920
BY: CHRISTOPHER E. PLATTEN, Esq.

ON BEHALF OF THE CITY:

RENNE SLOAN HOLTZMAN SAKAI
50 California Street, Suite 2300
San Francisco, California 94111-4624
(415) 678-3800
BY: CHARLES D. SAKAI, Esq.

PANEL MEMBERS:

ON BEHALF OF THE UNION:

RANDY SEKANY
President
425 E. Santa Clara Street, Suite 300
San Jose, California 95113
(408) 286-8718

ON BEHALF OF THE CITY:

NORA FRIMANN, Esq.
City of San Jose
200 E. Santa Clara Street, T1600
San Jose, California 95113
(408) 535-1930

1 APPEARANCES (Continued)

2 Also Present:

3 GEORGE RIOS, San Jose City Attorney's Office

4 ALEX GURZA, Director of Employee Relations,
City of San Jose

5 ARACELY RODRIQUEZ, Senior Executive Analyst,
6 City of San Jose

7 JILL PLOUGH, Legal Analyst, San Jose City
Attorney's Office

8 JIM CARTER, Deputy Chief, Bureau of Field
9 Operations

10 DARRYL VON RAESFELD, Fire Chief, San Jose Fire
Department

11 SUZANNE HUTCHINS, Deputy City Attorney, City of
12 San Jose

13 JEFF WELCH, Local 230 Vice President

14 MARK SKEEN, Executive Vice President, San Jose
Firefighters

15 JIM BUESSING, Contractor, Wylie, McBride,
16 Jesinger, Platten and Renner

17 ROBERT SAPIGN, Local 230 member

18 KEITH KEESLING, Local 230 Treasurer

19 TERRY OHLSEN, Consultant, Local 230

20 RANDALL HUDGINS, Consultant, Local 230

21 RICH THOMAS, Consultant, Wylie, McBride,
22 Jesinger, Platten & Renner

23 ---000---

24

25

1 opposed to two-percent COLA. Are there other benefits
2 that San Jose offers to people upon retirement?

3 A. Yes. Our retirement plan, again, it's not like
4 PERS, so it has other issues. There's, obviously,
5 our -- our retiree medical is part of our plan.

6 There's also, like you mentioned, the
7 three percent guaranteed cost of living, which, again,
8 is not the standard.

9 And the other additional benefit that is part
10 of the police and fire plan is what we call a
11 "supplemental retiree reserve fund." And there are
12 hand-outs that describes that, that benefit.

13 MR. SAKAI: And this, I believe, is "C-26."

14 THE ARBITRATOR: Right.

15 Marking as City Exhibit C-26, a packet of
16 documents, the first page of which is a memorandum dated
17 December 4, 2001, addressed to the mayor and the city
18 council.

19 (City Exhibit No. 26-C was marked for
20 identification.)

21 Q. (By MR. SAKAI): And, so, what is the
22 supplemental retiree benefit reserve?

23 A. Well, it's a little complicated to explain.
24 The memo should -- does describe it.

25 It is a program that was added to the police

1 and fire plan. They actually have it in the Federated
2 plan, which is our other pension plan for non-sworn
3 employees.

4 This one functions a little different, but
5 essentially it takes funds in the retirement plan, moves
6 them to what's called a fund, and what it was -- trying
7 to be brief about it -- if the fund earns more than the
8 actuarially-assumed rate, so right now let's say it's
9 eight percent, and the fund earns 10, it takes
10 10 percent of that excess and moves it to this
11 supplemental retiree benefit reserve.

12 THE ARBITRATOR: We talked about this before.

13 THE WITNESS: I don't know if maybe John Bartel
14 mentioned it.

15 THE ARBITRATOR: Yes.

16 THE WITNESS: So what it actually does, the
17 first --

18 THE ARBITRATOR: It's a savings plan.

19 THE WITNESS: Well, not a savings plan. It
20 takes part of what the fund assets are, moves it there,
21 and then the second memo describes the way that it's
22 distributed to retirees.

23 So it ends up, in some places, in some pension
24 plans, it's referred to as a 13th check.

25 In other words, if there's funds available to

1 be distributed, it's based on some formula that usually
2 takes into account years of service and how long you've
3 been retired. And then cuts you a separate check.

4 So that is an additional benefit that our
5 pension plan provides, and it was added in in 2001.

6 MR. SAKAI: And, Madam Arbitrator, cognizant of
7 the time, we're about five minutes 'til we hit a good
8 breaking point.

9 THE ARBITRATOR: Okay.

10 Q. (By MR. SAKAI): Looking at this Slide 20, what
11 is this?

12 A. This is -- because we do have a proposal on
13 sick leave payout, we wanted to demonstrate what our
14 average sick leave payout and vacation payout is,
15 because they are paid out at the time of retirement.

16 So the top one is average sick leave payout.
17 It shows it by rank, and then it shows the average sick
18 leave payout that's paid out at retirement.

19 So if you look at battalion chief, you'll look
20 at the average in 2002 is 44,000. Then in 2003 it was
21 104.

22 Again, why do you see such variations? It's
23 going to be because of the number of battalion chiefs.
24 It's a smaller rank, how many retired that particular
25 year, and what their average sick leave payout is.

1 THE WITNESS: Sure.

2 THE ARBITRATOR: And, so, there's no separate
3 contribution that goes beyond the original funds that
4 went in there, as I understand.

5 THE WITNESS: But, the City is a guarantor of
6 last resort, which is important to remember in a pension
7 fund.

8 When you have a defined pension plan, let's say
9 the funds are not managed well, and let's say we're not
10 at 100 percent, but we follow the track of a San Diego.

11 The City is very well-aware that if something
12 happens to the pension fund, it's not managed well over
13 a period of years, which if you look at San Diego,
14 that's what happened.

15 They were funded relatively well, and in a
16 several-year period of time, significant things
17 occurred. And -- but, the City is the one who has to
18 guarantee that the checks will be cut, regardless.

19 So it's a very important thing that we always
20 remember. That it is a guaranteed benefit, that the
21 City is the one that has to guarantee will be paid,
22 regardless of fund performance.

23 Q. (By MR. PLATTEN): The SRBR is not a guaranteed
24 benefit, is it?

25 A. No, it's not.

Received

FEB 04 2013

meyers | nave

Priority Mail
ComBasPrice



135.027

J. Fely | K. Burns

**WYLIE, MCBRIDE,
PLATTEN & RENNERT**

A Law Corporation

2125 CANOAS GARDEN AVENUE, SUITE 120
SAN JOSE, CALIFORNIA 95125

**Linda M. Ross, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607**