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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

14 SAN JOSE POLICE OFFICERS' ASSOCIATION,  
15 Plaintiff,

16  
17 v.

18  
19 CITY OF SAN JOSE AND BOARD OF  
ADMINISTRATION FOR THE POLICE AND FIRE  
20 DEPARTMENT RETIREMENT PLAN OF CITY  
OF SAN JOSE, and DOES 1-10 inclusive,  
21 Defendants.  
22

23 AND RELATED CROSS-COMPLAINT  
AND CONSOLIDATED ACTIONS.  
24  
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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 OPPOSITION TO  
MOTIONS IN LIMINE OF  
DEFENDANT CITY OF SAN JOSE**

**Pre Trial Date: July 12, 2013**

**Time: 9:00 a.m.**

**Dept: 2**

**Judge: Hon. Patricia M. Lucas**

**Trial Date: July 22, 2013**

1 I, Christopher E. Platten, say:

2 1. I am one of the attorneys for plaintiffs Robert Sapien, et al., Teresa Harris, et al, and  
3 John Mukhar, et al. who are or were members of IAFF Local 230, IFPTE Local 21 and Operating  
4 Engineers Local No. 3, respectively, unions representing employees of the City of San Jose.

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

10 A. The primary issue being arbitrated was whether or not the maximum pension  
11 benefit of the Police and Fire Department Retirement Plan should be increased from 75% to 80% of  
12 final compensation.

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

- 16 • Page 24:21 – 25:12

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

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

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

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

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

- 1                   • Page 26:4-16:

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

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

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

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

- 15                   • Page 2:10-16

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

23                 Attached hereto as **Exhibit 2** are copies of relevant portions of that Opening Brief.

24                 5.           In his Reply Brief in the same interest arbitration Mr. Rios set forth the following:

- 25                   • Page 2:20-24

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

28                 Attached hereto as **Exhibit 3** are copies of relevant portions of that Reply Brief.

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

- 3           • Page 1:23 – 2:4

4                     “Under the Plan, benefits are funded by contributions from both the City and  
5 the members. Member contributions (excluding those for medical coverage) consist  
6 solely of ‘current service’ costs; City contributions consist of ‘current service’ costs  
7 and also ‘prior service’ costs. Section 3.36.1520 of the San Jose Municipal Code  
8 provides that ‘current service’ costs ‘shall not include any amount required to make  
9 up any deficit resulting from the fact that previous rates of contribution made by the  
10 City and members were inadequate to fund benefits attributed to service rendered by  
11 such members prior to the date of any change of rates,....’ Costs related to service  
12 rendered prior to the date of any contribution rates changes are allocated to ‘prior  
13 service’ costs which are borne entirely by the City (San Jose Municipal Code Section  
14 3.36.1550).”

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

16           7.     In a separate binding interest arbitration pursuant to San Jose City Charter, Section  
17 1111 between Local 230 and the City of San Jose, I attended an arbitration session on January 5,  
18 2007 representing Local 230. Jerilou Cossack was the independent arbitrator. Attorney Charles  
19 Sakai represented the City.

20           The main issue being arbitrated was to raise the union’s proposal to the maximum retirement  
21 benefit to 90% from 85% of final compensation. In that hearing Alex Gurza, Director of Employee  
22 Relations was asked by the City’s Attorney to explain what the SRBR fund (part of the pension  
23 plan) was. He outlined what an SRBR was. He then concluded by stating “so that is an additional  
24 benefit that our pension provides and it was added in 2001.” Mr. Gurza also confirmed that the City  
25 was the guarantor of the pension fund benefits. Attached hereto as **Exhibit 5** are true and correct  
26 copies of relevant portions of the court reporter’s transcript of the proceedings on June 5, 2007  
27 which accurately reflect Mr. Gurza’s testimony (pgs. 1667:22-1669:5; 1283:2-22)

28           8.     In December of 1990 I represented IAFF Local 873 (subsequently renamed Local

1 230) in a binding interest arbitration with the City of San Jose at which the City presented testimony  
2 of Steven T. Itelson, a consulting actuary to the San Jose Police and Fire Retirement Board from  
3 1983 to the date of his testimony. In the course of his presentation he testified as follows:

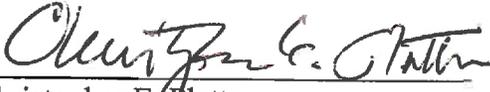
- 4 • Page 81:15 – 82:5

5 Q: “There has been some discussion here, which you may be able to improve  
6 upon, as to the ratio of contributions between the City and the employees and  
7 other factors that somehow determine what the ultimate rates are by the City and  
8 the employees. First, will you describe the 8-to-3 ratio? What is it and how does  
9 it work?

10 A: The interpretation of the City Code that we were given was that “current  
11 service cost” meant the cost of the Plan for new employees or new participants,  
12 and that cost was split in a 8-to 3 ratio. But contributions at that level in the  
13 future, together with the assets at that point in time, would not cover the cost of  
14 all the benefits. This is the so-called unfunded liability. Whether it is called  
15 USVP or UAL or some other actuarial term, the City is fully responsible under  
16 the Code for payment of that unfunded liability.”

17 Attached hereto as **Exhibit 6** are copies of pages 78, 79, 81 and 82 of a partial court  
18 reporter’s transcript of his testimony which accurately sets forth his testimony.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed on July 8,  
20 2013, at San Jose, California.

21   
22 Christopher E. Platten

23 I:\0230\72256\pnd\motions in limine\decl. of platten in opposition to mtn in limine of defendant city of san jose  
24 070213.docx

# Exhibit 1

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IN ARBITRATION PROCEEDINGS PURSUANT TO THE COLLECTIVE  
BARGAINING AGREEMENT BETWEEN THE PARTIES

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In the Matter of a Controversy  
between  
SAN JOSE POLICE OFFICERS ASSOCIATION  
and SAN JOSE INTERNATIONAL ASSOCIATION  
OF FIREFIGHTERS,  
and  
CITY OF SAN JOSE,

VOLUME I

BEFORE:

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

Location:  
San Jose Police Officers  
Association Office  
1151 North First Street  
San Jose, California

Date: June 5, 1997

Time: 10:00 a.m.

J.  
J.  
Reporting  
Services

28 North First Street, Suite 202  
San Jose, California 95113  
(408) 299-4040

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 B. 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

**EMPLOYER REPRESENTATIVES:**

**ALEX GURRA, Executive Assistant, Employee Relations**

**LYNN BOLAND, Employee Relations Officer**

**TIMOTHY S. SPANGLER, Deputy City Attorney**

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

ARBITRATOR BOGUE: Sure.

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

ARBITRATOR BOGUE: Okay.

OPENING STATEMENT ON BEHALF OF THE CITY

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

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

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

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

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

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  
\*\*\*J. J. REPORTING SERVICES\*\*\*

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

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JOAN R. GALLO, City Attorney (#65825)  
GEORGE RIOS, Assistant City Attorney (#77908)  
TIMOTHY S. SPANGLER, Deputy City Attorney (#168163)  
Office of the City Attorney  
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Telephone: (408) 277-4454

**COPY**

Attorneys for CITY OF SAN JOSE

IN RE: ARBITRATION OF POLICE AND FIRE  
RETIREMENT

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

1 quo. (See Exhibit "A", Brand Award, pages 8-9.<sup>1</sup>) 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 <sup>1</sup> 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)  
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Attorneys for CITY OF SAN JOSE

COPY

8 IN RE: ARBITRATION OF POLICE AND FIRE  
9 RETIREMENT

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16 CITY OF SAN JOSE'S REPLY BRIEF  
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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)  
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Attorneys for CITY OF SAN JOSE

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.<sup>1</sup> 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 <sup>1</sup> 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

INTEREST ARBITRATION

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COPY

In the Matter of the Controversy  
between

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 230,

Union,

CSMCS Case No.  
ARB-04-3025

and

CITY OF SAN JOSE,

Employer,

Volume 8  
Pages 1080 through 1353

Dolce Hayes Mansion  
200 Edenvale Avenue  
San Jose, California  
Friday, January 5, 2007

Met, pursuant to notice, at 9:30 a.m., on the  
record at 9:46 a.m.

Before:

JERILOU COSSACK, Arbitrator,  
3231 Quandt Road, Lafayette,  
California 94549

Reported by KATHERINE L. WAKI, CSR 5666

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APPEARANCES

ON BEHALF OF THE UNION:

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BY: CHRISTOPHER E. PLATTEN, Esq.

ON BEHALF OF THE CITY:

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BY: CHARLES D. SAKAI, Esq.

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ON BEHALF OF THE UNION:

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1 APPEARANCES (Continued)

2 Also Present:

3 GEORGE RIOS, San Jose City Attorney's Office

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

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

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

10 JIM CARTER, Deputy Chief, Bureau of Field  
11 Operations

12 DARRYL VON RAESFELD, Fire Chief, San Jose Fire  
13 Department

14 SUZANNE HUTCHINS, Deputy City Attorney, City of  
15 San Jose

16 JEFF WELCH, Local 230 Vice President

17 MARK SKEEN, Executive Vice President, San Jose  
18 Firefighters

19 JIM BUESSING, Contractor, Wylie, McBride,  
20 Jesinger, Platten and Renner

21 ROBERT SAPIGN, Local 230 member

22 KEITH KEESLING, Local 230 Treasurer

23 TERRY OHLSEN, Consultant, Local 230

24 RANDALL HUDGINS, Consultant, Local 230

25 RICH THOMAS, Consultant, Wylie, McBride,  
Jesinger, Platten & Renner

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I N D E X

AFTERNOON SESSION: 1177

CITY WITNESSES

Direct	Cross	Redirect	Recross
1088	1219		
	1321		

UNION REBUTTAL  
WITNESSES

Randall Hudgins

1326	1334
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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.

# Exhibit 6

~~COPY~~

IN ARBITRATION PROCEEDINGS PURSUANT TO  
SAN JOSE CITY CHARTER SECTION 11 11

--oOo--

In the Matter of Arbitration ]  
 ]  
 between ]  
 ]  
 INTERNATIONAL ASSOCIATION OF ]  
 FIREFIGHTERS LOCAL UNION ]  
 NO. 873, ]  
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 Union, ]  
 ]  
 and ]  
 ]  
 CITY OF SAN JOSE, ]  
 ]  
 Employer, ]  
 ]  
 involving contract issues ]  
 in dispute. ]

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VOLUME I  
Pages 1 - 109, inclusive

San Jose, California

December 12, 1990

REPORTED BY

**ELIZABETH BLAKE**

*Certified Shorthand Reporter*

(License No. C-1412)

66 Sea Cliff Avenue

San Francisco, California 94121

(415) 668-5195

1 Itelson.

2 STEVEN T. ITELSON,

3 called as a witness by the City, having been sworn by the  
4 Reporter, was examined and testified as follows:

5 DIRECT EXAMINATION

6 Q. [By Mr. Whitmore] Would you please state your name  
7 for the record?

8 A. Steven T. Itelson.

9 Q. Would you spell your last name, please?

10 A. I-t-e-l-s-o-n.

11 Q. And what is your present occupation?

12 A. I am a Consulting Actuary.

13 Q. And for whom do you work?

14 A. Milliman and Robertson.

15 Q. Prior to that, where were you employed?

16 A. Martin E. Segal Company.

17 Q. While employed by Martin E. Segal, did you do some  
18 work for the San Jose Police and Fire Retirement Fund?

19 A. Yes. From 1983 until May of this year

20 MR. PLATTEN: Excuse me.

21 Could you please speak up a little bit?

22 THE WITNESS: Yes.

23 From 1983 until May of this year.

24 Q. [By Mr. Whitmore] Mr. Itelson, earlier we had  
25 several references to memos bearing your name when we were

1 reviewing exhibits. Were you the author of those memos?

2 A. Yes.

3 Q. With regard to the Police and Fire Retirement Fund  
4 in San Jose, can you describe generally what your duties  
5 were with respect to that Fund?

6 A. Yes.

7 My duties primarily were to perform bi-annual  
8 actuarial valuations to determine contribution rates, and  
9 also to review experience to set new assumptions on which  
10 to base the contribution rates. In addition, there were  
11 other areas of consulting related to the Retirement  
12 Program.

13 Q. With regard to the contribution rates, what was your  
14 role with regard to the setting of the rates?

15 A. I would recommend contribution rates based on a set  
16 of assumptions and actuarial methods based on the  
17 participant data and financial data that we were provided,  
18 the plan of benefits and the applicable City Code sections  
19 as I understood them.

20 Q. And that would come in the form of a recommendation  
21 to the Retirement Board?

22 A. Yes, it would.

23 Q. Then what would happen to the recommendation?

24 A. The Retirement Board would vote on that  
25 recommendation.

1 happen to that recommendation to the Retirement Board?

2 Was it adopted?

3 A. In 1985, yes. In 1983, yes.

4 Q. And what action was taken to do that--a vote of the  
5 Board?

6 A. I am not really certain. I think the Board voted.

7 Q. Were the contribution rates for both the employees  
8 and the City put into effect after your recommendation and  
9 whatever action was taken?

10 A. Yes.

11 Q. With regard to the employee rates, to your  
12 knowledge, was there ever a different rate for Police  
13 employees than for Fire employees?

14 A. Not to my knowledge. Not since 1983.

15 Q. There has been some discussion here, which you may  
16 be able to improve upon, as to the ratio of contributions  
17 between the City and the employees and other factors that  
18 somehow determine what the ultimate rates are by the City  
19 and the employees. First, will you describe the 8-to-3  
20 ratio? What is it and how does it work?

21 A. The interpretation of the City Code that we were  
22 given was that "current service cost" meant the cost of  
23 the Plan for new employees or new participants, and that  
24 cost was split in an 8-to-3 ratio. But contributions at  
25 that level in the future, together with the assets at that

1 point in time, would not cover the cost of all the  
2 benefits. This is the so-called unfunded liability.  
3 Whether it is called USVP or UAL or some other actuarial  
4 term, the City is fully responsible under the Code for  
5 payment of that unfunded liability.

6 In 1984, retiree medical benefits were added to the  
7 Plan. My understanding is that the parties bargained to  
8 split that contribution rate 50-50. A hybrid funding  
9 method was adopted called ten-year, rolling-term funding.

10 This methodology is unique. Most retiree medical  
11 plans are not funded. They are paid on a pay-as-you-go  
12 basis. This methodology gave partial funding and reflected  
13 the fact that the benefits are bargained and do change  
14 from time to time.

15 In 1985, effective for 1986, somewhere in that  
16 period, a dental plan was also adopted. The split of the  
17 contributions there, which was .25 to .08, was done  
18 primarily, I believe, to recognize that the employee rate  
19 would have dropped by .08. Therefore, it was most  
20 convenience to split it with the employees only paying .08  
21 and leaving their contribution as it stood.

22 Dental is funded on the same rolling ten-year-fund  
23 basis as the retiree medical.

24 Q. As I understand it, you have described three  
25 different ratios or relationships between the City and the