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Vincent P. Floyd
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4178

Re: Purchase of Service Credits

Dear Mr. Floyd:

My firm represents the San Diego Municipal Employees Association in labor relations matters between it and the City of San Diego. This letter is in response to yours dated March 6, 2007, addressed to MEA President Howard Guess, in which you indicate the City's "willingness" to discuss with MEA certain amendments to San Diego Municipal Code section 24.1312 which, you say, the City is "considering" related to purchase of service credits. You have directed MEA to contact the City's Labor Relations Manager Scott Chadwick to "schedule discussions."

MEA declines the invitation to schedule such discussions for the following reasons:

(1) On all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, the City must not only be "willing" to meet and confer in good faith *but has a duty to do so under state law* – the Meyers-Miliias-Brown Act (MMBA) – and may *not* lawfully make any unilateral changes on matters within the scope of representation until and unless such a good faith process occurs and results in an impasse.

(2) The City and MEA have a binding collective bargaining agreement – Memorandum of Understanding (MOU) – in effect which was made final and binding by action of the City's governing body on June 27, 2005, pursuant to the MMBA, with an expiration date of June 30, 2008. With a binding MOU currently in effect, there will be no "meet and confer" under the MMBA related to the terms of this MOU – or other matters within the scope of representation defined by the MMBA – until 2008 in anticipation of the expiration of the MOU on June 30, 2008.

(3) During the MMBA-mandated meet and confer which resulted in the current MOU, the City demanded – and MEA made – certain concessions related to wages and benefits in order to reach agreement. Among other concessions, MEA agreed that *new* employees hired by the City on or after July 1, 2005, “are not eligible for the purchase of service credit (“airtime”) in SDCERS, except for credit for up to five years of military service.”

(4) The meet and confer process which resulted in the current MOU took place in 2005 during the administration of the current City Attorney. However, the *City* made no proposals to change the *vested*, Constitutionally-protected pension benefits of any active employee (as opposed to *new hires*) – including the *vested* rights of active employees related to service credits purchased pursuant to provisions of the SDMC – because the *City* *acknowledged* that such changes may not lawfully be made and that, given the *individually vested* nature of these rights, a Union serving in the role of exclusive bargaining representative, may not lawfully bargain away such benefits¹ (assuming the Union were otherwise inclined to do so) – *and* the *City* also recognized that it may ***not lawfully*** demand that the Union do so in the course of *good faith* collective bargaining.

Accordingly, the *City* may not unilaterally change or impair *individually* vested pension benefits. As you undoubtedly know, a purchase of service credit is made pursuant to an *individual* contract signed by a plan participant who makes irrevocable employment, investment, tax, and retirement decisions based on the terms of that contract, including the purchase price for the service credits he or she has decided to purchase. Each plan participant who signed such a contract – and relied to his/her detriment upon its terms – *paid the price that he or she was asked to pay*. This price was not subject to individual negotiations but was dictated to the plan participant as a term of the contract.

Should you need additional background on this subject, please consult the trial transcripts related to Phase One of the recent pension-benefit-related trial before Judge Barton in Department 69 of the Superior Court, as there was considerable testimony given under oath related to the subject matter of purchased service credits. This testimony included, among other pertinent points, the fact that employees have permissibly used various vehicles to purchase service credits – weighing the pros and cons of each option in the hopes

¹ The *individual, Constitutionally-protected, vested* nature of these pension benefits and the fact that a Union may not lawfully bargain them away has been recognized and confirmed by Judge Barton in his final Statement of Decision filed on January 18, 2007 – in which Judge Barton has also **rejected the City’s attempt to declare all “MP I” benefits – including the purchase of service credit benefit – null and void**. It appears that the amendments to the Municipal Code which, you say, the *City* is considering – though ill-advised and unlawful – are a reaction to this courtroom defeat.

March 12, 2007

Page 3

that the choice would be the right one for them and their loved ones – purchasing service credits by paying cash derived from an inheritance or the sale of a home, transferring funds from SPSP, a 401(k) account, or other retirement investment program and thus forfeiting those potential investment gains; others have paid for their service credits by authorizing deductions from their bi-weekly paychecks – some on a pre-tax and others on a post-tax basis.

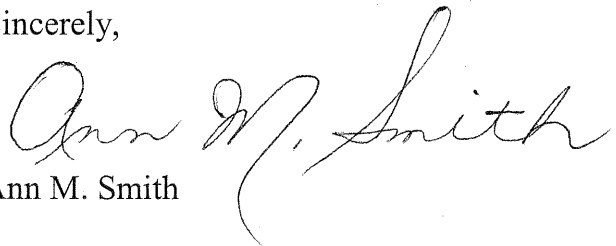
In short, the substantive issue can be summed up this way by analogy: If you got a letter in the mail *four to ten* years after you bought your car telling you that the seller hadn't charged you enough for it, would you be writing a check for the additional amount the seller was demanding – or agreeing to return the car if you couldn't afford the higher price? *Of course you wouldn't.* If you were the attorney for that seller, would you be advising the seller to pursue such a fool's errand? Though we have never met or even spoken, I think it is unlikely in view of the fact that you passed the California bar exam.

In accordance with its custom and practice for the past nearly 30 years, MEA will meet and confer in good faith with the City during the appropriate time frame in 2008 on all *proper* subjects of bargaining.

Finally, lest you overlook it in the **City Charter**, please be aware that – apart from the City's obligations under the MMBA and the prohibition against impairment of vested, Constitutionally-protected pension benefits – *no Ordinance affecting pension benefits* may become law – and thus effectively amend the San Diego Municipal Code – **unless and until the pension plan participants vote to approve it.** City Charter § 143.1.

Should you have any questions regarding this correspondence, please do not hesitate to contact me to discuss them.

Sincerely,



Ann M. Smith

cc: MEA Board of Directors
Mayor Jerry Sanders
Members of the City Council
COO Ronne Froman
Scott Chadwick, Labor Relations Manager