



MEMORANDUM
September 27, 2007

TO: Honorable Councilmembers
Mike Aguirre, City Attorney

FROM: Mayor Jerry Sanders

SUBJECT: Effective Date of July 1, 2005 Negotiated Retirement Benefit Changes

The San Diego City Employees' Retirement System (SDCERS) has informed the City that they are using an effective date of February 16, 2007 for the benefit changes that were negotiated in 2005. They have asserted that they will not recognize an effective date of July 1, 2005 because the City Attorney did not memorialize the Memoranda of Understanding (MOU's) into ordinances "in a timely manner" as is called for in the documents.

There are now two competing legal opinions on this issue: one from SDCERS fiduciary counsel, Harvey Leiderman at the firm of ReedSmith, and one from a firm hired by the City Attorney, K&L Gates. With no solution in sight, I am recommending to the City Council that the City file a Declaratory Relief action in San Diego Superior Court and allow a judge to decide the issue. I am also recommending that the City Council retain outside counsel, reporting jointly to the Council and me, to handle this matter because of the City Attorney's role in creating this conflict.

Approximately 700 new City employees were hired between July 1, 2005 and February 16, 2007. If SDCERS is correct, the City will expend tens of millions of dollars over the next several years given that the DROP program, Pension Service Credits and retiree healthcare will be benefits made available to these recent hires. Both our pension and retiree health liabilities will rise. Clearly, this is not something that I support nor do I believe is in the best interest of the taxpayers. By way of this memo, I am also informing SDCERS trustees and management of my recommendation. I ask that SDCERS have prepared an actuarial valuation of this potential liability.

The simple fact is that none of this would be a problem today if the City Attorney had simply done his job and memorialized the MOU's into ordinances in a timely manner. On a number of occasions, Council President Peters and I urged the City Attorney, in person and in writing, to codify the MOU's. Our requests were ignored.

I ask the City Council to consider this recommendation immediately so that we can settle this matter.

Thank you.

cc: Board of Trustees, SDCERS
David Wescoe, SDCERS Administrator
Andrea Tevlin, IBA

Attachments