

City of Palo Alto Last, Best, and Final Offer Cover Letter

October 16, 2009

Mr. Nick Steinmeier
Internal Organizing Director
SEIU Local 521
981 Industrial Rd., Suite A
San Carlos, CA 94070

Union Offer and City's Last, Best, and Final Offer

Dear Nick:

This letter explains the City's response to the Union's offer dated October 13, 2009, and presents the City's last, best and final offer, which is attached. From the beginning of these negotiations five months ago, our discussions have had several consistent features. First, the parties have differed fundamentally on the magnitude of the financial challenges facing the City. Second, the parties have differed persistently over the anticipated duration of the current downturn. The City has viewed the problems as long-term and major in magnitude. The Union, although more recently offering substantial short-term relief and even some modest long-term savings, has viewed the problem as one requiring much less long-term structural change. Finally, the parties have had differences over whether particular strategies would produce a given level of savings. These differences have persisted through to the present.

1. City's Response to The Union's 10/13/09 Proposal

The City of Palo Alto has considered the Union's October 13, 2009 proposal, but cannot accept it for the reasons outlined below. The comments that follow address the major economic components of the proposal. The City's and Union's views on other issues (e.g. Association business, compensation survey, classification procedures, etc.) have been expressed repeatedly over the last several months and do not require further iteration.

First, although the City acknowledges the addition of second year of furlough time and the reduction of five floaters in the Union's latest package offer, this proposal is not acceptable because, in the City's opinion, it does not generate the magnitude of short and long-term savings needed, nor does it adequately address the structural factors (pension and medical) most responsible for driving escalation of the City's benefit costs.

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The City acknowledges that the Union's October 13 proposal reflects reliable on-going savings in the area of tuition reimbursement and tangible substantial temporary savings through furloughs. The Union has also offered changes on floating holidays that most certainly represent significant enhancements of productive time. However, the hard dollar savings associated with these holidays is a matter of speculation at this point.

Two of the Union's proposals, those pertaining to the new hire pension contribution rate and the new "zero" step on the salary range offer some probable savings, but the magnitude and timing of those savings is speculative, as it depends on future turnover and replacement rates, and actual behavior with respect to hiring step for new hires (based on qualifications, pre-existing salary, etc.). The pension contribution proposal also appears somewhat questionable because the relevant PERS limits such an arrangement to five years, when the Union's proposal seems to cover six years.

The parties have discussed their different perspectives on the pertinent magnitude and timing assumptions at length. The Union thinks a 6% turnover rate is a reasonable assumption. The City thinks a 4.5% rate might be more realistic. Either could be right – or wrong. In short, the parties do not agree on the accuracy or reliability of the assumptions that might be made, but in either case the projection of savings flowing from these two proposals could be far off the mark depending on unknown future economic and operational conditions. The nation and California have just been through a largely unpredicted and radical departure from what had been taken for granted as relative economic stability. Like individual consumers, savers, and employees, the City is concerned that now is not the time for gambling on the economy. Consequently, the City cannot concur on the Union proposals to date to secure its financial future.

Further, as you and I have discussed, this proposal would require the City to accept an inherent risk because the law on this issue has not been settled. The *Palo Verdes* line of cases seem to hold at least some potential for litigation over whether, having served time under a new hire contribution scheme such as the one proposed by the union, new employees might successfully claim to have vested in the lower rate of contribution currently in place for existing employees that they are promised once they have served their time in the new employee contribution level. If new hires have a vested right to that lower rate by virtue of service in the new hire contribution scheme, presumably that right could be altered only by conferring an offsetting benefit. While there is case law that casts doubt on the *Palo Verdes* line of cases, and creative drafting might provide some measure of insulation against such a claim, as I have explained, the City cannot accept the risk that it might lose the flexibility to bargain over a different post-new hire rate.

The Union has also proposed a "reorganization committee" that would meet with the goal and purpose of generating sizeable savings through position elimination and "efficiencies." The City is not conceptually at odds with the maximization of organizational resources through organizational analysis. But the City knows that this would involve complex subjects and protracted discussions, with much room for disagreement and with highly speculative return. As such, the City does not believe that reliance on this type of measure would be a practical way to fill the definite gaps in the City's short and long-term finances.

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The Parties have also differed consistently over whether a change in pension formula or health insurance funding, for active and retired employees, is warranted. The City thinks that both changes are necessary to ensure a financially sustainable future for the City and employees; the Union does not and has steadfastly refused to consider or entertain any changes whatsoever in either benefit. While the City understands the Union's perspective, the current data that the City has presented shows the large magnitude of costs associated with each, the escalating long-term trajectory of both, and the fact that the City is paying an increasing overall share of those costs. Finally, the parties have disagreed on the absolute amount of on-going savings relief needed in the current environment. In this regard, the Union's proposal falls significantly short of the amount the City thinks is necessary.

2. The City's Last, Best, and Final Offer

Accompanying this letter is a revised City package proposal, which is the City's last, best, and final offer to the Union on each of the issues that remain in dispute. Those areas on which the parties have reached tentative agreement are shown in final form. All agreed upon deletions and insertions have been made, and those that were not have been returned to the language of the expired 2006-09 MOU. Proposed additions and deletions on which the parties continue to disagree are shown with deletions over-struck and insertions underscored. **The City rejects any union proposal previously made not expressly addressed in this offer.**

The Union's acceptance or rejection of this offer must be delivered to me in writing by 9:00 a.m. Thursday, October 22, 2009, at our scheduled meeting. Failure to accept all portions or failure to provide any response by the deadline will be deemed rejection of the offer. If the Union explicitly rejects this offer, or effectively rejects it by failing to respond by the above-stated deadline, the City deems the parties to be at impasse. Further, if the Union rejects the offer, the City requests that the Union be prepared at the October 22 meeting to discuss with the City, pursuant to section 1208 of the City's Merit System Rules and Regulations, methods of resolving the dispute to which it might be willing to agree.

3. Summary of Last Best and Final Offer

This City offer is similar to past offers in most respects. The following summarizes the major changes from the City's previous offers. The City will be prepared to further explain the terms of this last offer and answer any questions about it when we meet on October 20, 2009.

Duration. This proposal is for an MOA that runs through June 30, 2010. The City has heretofore proposed a two year term. However, based on the parties' continued inability to agree to date on terms for such an agreement has concluded that a shorter term may be easier to address and would be more consistent with the implementation of a last, best and final offer should that prove necessary.

Furloughs. The next change, and it is a major one, is the elimination of the pre-set unpaid furlough days from the package. Article XI, section 8 now addresses furloughs only in the

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context of recovery of savings lost before the contract is put effect by employees applying for reimbursement for eligible expenses under the tuition reimbursement and training program. You will see that the City has added a little language to flesh out how this would work. Obviously, it is the City's hope that application of this provision will prove unnecessary.

Health Insurance: The City has modified this proposal. The City's previous proposal was to equally share premium increases for each plan at the employee's level of enrollment (one party, two party, family) occurring after 1/31/10 with a maximum increase for the employee of five percent in any single year. Over a prolonged period (e.g. 30 or 40 years), this would build ever closer to an ultimate 50/50 split of total premium. In the modified proposal the City has further modified this premium sharing arrangement so that once sufficient increases occur that the employee is paying 10% of the total premium for the applicable plan and level, premium increases will be paid 90% by the City and 10% by the employee. As long as this arrangement is in effect, the employee's share of total premium never exceeds 10% of the premium. The City feels that this is a reasonable way to offer some assurance to employees while at the same time providing relief to the City.

Floating Holidays. As the Union knows, the City does not believe that the elimination of floaters will save hard dollars to the same extent that they represent productive time. The Union has suggested that they may save 90% (\$170,000) of the \$189,000 productive time value; the City thinks the true hard savings will be less than a quarter of that amount, if that. However, the City also understands that this particular approach takes some of the pressure off of employees' pocket books. Therefore, the City proposes to permanently eliminate two floating holidays. For costing purposes, we have attributed \$170,000 savings to each (the amount suggested by the Union). From a budget standpoint, this means that the City will receive substantially less hard dollar savings than it has sought and needs. Eventually this will could translate into cuts, potentially including staff.

PERS Contribution: The PERS contribution increase is raised to 6% effective with the pay period including December 1, 2010. This is caused by two factors. First, the effective date for implementing the increase is extended yet again in this proposal, owing to the passage of time and efforts to reach an agreement. Second, the increase offsets the loss of that portion of the furlough revenue not covered by the \$341,000 in "savings" credited for the two floaters (described above). The increase in the PERS contribution rate drops by two and one-quarter percent (3.75%) effective June 30, 2009, reflecting the fact that the revised rate would be sufficient to maintain the same level of savings over twelve months as is generated by the higher rate over an approximate seven month period.

Overall Savings: The package in this last, best and final generates estimated FY 09-10 savings as follows:

6% PERS	\$1,599,500 (over 7 months)
Tuition/Training	607,500
Floating Holidays (2)	<u>340,000</u>

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Total \$2,551,000

The “hard” savings in the above is closer to \$2.2 million, a marked decrease from the 10/6/09 (a/k/a corrected 9/22) proposal, and less than half of what the City sought when negotiations began in May. The above PERS savings are actually overstated. The above credits each percent of PERS savings at \$457,000. That was the pre-budget adoption number. SEIU’s unit membership dropped when the budget was adopted, so the actual savings number is closer to \$448,000. However, the higher figure has been used for consistency purposes.

You will see the remaining tweaks as you review the redlined provisions. The summary above covers the main points. Although the City continues to propose 2 @ 60 and changes in the health insurance premium sharing provisions, the City hopes the Union will find the foregoing package in this last, best and final offer acceptable and will be able to agree to the terms by the time and date set forth in section 2 above. Thank you for considering its terms.

Sincerely,

Darrell Murray
I.E.D.A.; City Chief Negotiator

Cc: James Keene
Gary Baum
Russ Carlsen
Lalo Perez
Sandra Blanch
Marcie Scott
Melissa Tronquet
Paul Dornell
Charles Cullen
Robert DeGeus
Dean Batchelor
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Lynn Krug

