

City Attorney Jan Goldsmith
February 24, 2013



Contact: Tom Mitchell
(619) 533-4782
tmitchell@sandiego.gov

CITY ATTORNEY UPDATE

COURT APPROVES “GOOD FAITH SETTLEMENT” IN SUBSTANTIALLY EQUAL CASE

By Jan Goldsmith

On Friday, February 21, the court granted our motion to approve settlement of the lawsuit known as the “substantially equal” litigation as a “good faith” settlement. In doing so, the court found, based upon evidence before the court, that the City’s motivation for the settlement was “a fear of loss of safety personnel, and the high cost of training, rather than avoiding the merits of a trial.” (See the attached Tentative Ruling which was affirmed by the court)

The settlement was announced in November 2013, but was subject to court approval. At issue was whether the City Council’s decision to settle was motivated by a good faith policy decision as stated in the settlement agreement, itself, or whether there was some ulterior motive.

The “substantially equal” clause of the City Charter provides that the City shall not be required to contribute more than a substantially equal amount as is required of employees toward the cost of normal pension benefits. In 2004, the City’s Pension Reform Commission discovered that the City’s pension board (“SDCERS”) was, in fact, requiring the City to pay a higher contribution than employees by forcing the City to make up for investment losses.

The original lawsuit was filed with unanimous City Council approval in May 2010 to enjoin SDCERS from requiring a higher contribution. In announcing the lawsuit on May 4, 2010, this office pointed out that the City could not be required to pay the higher amount, but could agree to a higher amount.

In settling the substantially equal lawsuit, the City Council decided it would cap employees’ contributions in light of labor agreements that freeze pension pay for five years, although it reserved the right to change that decision in the future. The Council’s concern was that increasing employee contributions on top of the five year pensionable pay freeze would have resulted in a mass employee exit, including police officers.

In finding that this policy decision was the motivation for the settlement- rather than avoiding the merits of trial- the judge was persuaded by the Declaration of Assistant Chief Shelly Zimmerman (see declaration attached) that the City would lose more than 200 officers if the City was successful in the substantially equal litigation.

City Attorney Update
April 30, 2013
Page 2 of 2

It is important to note, under the settlement, the City reserves the right to withdraw its agreement in the future and insist upon substantially equal contributions.

A transcript of the February 21 hearing is attached.

Please contact Tom Mitchell at (619) 533-4782 or tmitchell@sanidiego.gov for more information.

#