

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

COUNTY COURTHOUSE

TENTATIVE RULINGS - February 18, 2014

EVENT DATE: 02/21/2014 EVENT TIME: 10:00:00 AM DEPT.: Presiding

JUDICIAL OFFICER: Joseph Zimmerman

CASE NO.: 37-2010-00091207-CU-WM-CTL

CASE TITLE: CITY OF SAN DIEGO VS. SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

TENTATIVE RULING

Petitioner City of San Diego's ("City") motion for good faith settlement is granted.

This case has been pending almost four years and has had multiple motions, including motions for summary judgment, set and heard. The settlement was recently negotiated only after the City and the intervenor unions entered into memorandum of understandings ("MOUs"). (Goldsmith decl., ¶23.)

The court has reviewed the declarations of the city attorney, the interim mayor and some of the council members which voted in favor of the settlement. These declarations support that the settlement was motivated by a fear of loss of safety personnel, and the high cost of training, rather than avoiding the merits of a trial. (Kersey, Sherman, Emerald, Gloria declarations, ¶3; Goldsmith decl., ¶¶11.) It was estimated that three out of ten trained police officers leave the City's police department for other branches which pay better, but that the cost of training a police officer is almost \$190,000 per officer. Based upon the declaration of the assistant chief of police, Shelley Zimmerman (who is no relation to the assigned judge in this case), Zimmerman has heard over the last few months that many officers would retire, or leave, so that their contributions would not be affected by the outcome of a trial, and that if hundreds left in a short period of time (almost 200), the operations of the department and the safety of the public could be adversely affected and not in the best interests of the City. (Zimmerman decl., ¶4-6.)

The settlement is between all of the parties and was entered into on November 13, 2013. The unions agreed to the settlement because it leaves SDCERS' method of allocating actuarial losses unchanged and imposes no new economic burdens on employees. (Congers decl., Settlement, Ex. 1, Recitals, ¶1.) The City and all of its labor unions agreed in June 2013 to a five year freeze on so-called pensionable pay, as that term is described in Proposition B, approved by the voters in June 2012. The City estimates that such a freeze will result in a substantial reduction in the City's annual contributions to the pension plan. In light of this freeze, the City Council has decided that it does not want to further increase the burden on employees thereby risking loss of valued employees, including those in public safety. (*Ibid.*) Discovery has been completed, and the city entered into the agreement based upon the recommendation of the city attorney, and the review of the city council. Proposition B authorizes settlement of the lawsuit so long as the settlement is approved by 6 affirmative votes of the council and by the court as "a good faith settlement." (*Id.* at ¶7.) SDCERS entered into the agreement based upon the recommendation of independent fiduciary counsel, independent litigation counsel, and reviewed by its board. (*Id.* at ¶9.)

Accordingly, the court finds that the settlement was entered into between the parties in good faith.

The court reviewed intervenors' objections to Jan Goldsmith's declaration. First, Goldsmith's declaration was not determinative on the issue of whether the parties entered into the settlement in good faith. Furthermore, although the court has overruled many of the objections, it did so, in part, because the declaration was considered a summary review of history of the case, subject to reading the documents themselves, and the court's familiarity the case. The court takes judicial notice that various news articles were written. The court rules as follows on the objections, with these comments in mind:

Sustained: #3, 4, 19, 20, 26, 28, 31, 35, 42, 43, 48, 49, 62, 63 and 64. The court also sustains the balance of 39, after the word, "City." The court also restricts 65 sand 66 to Goldsmith only. The court overrules the balance of the intervenors' objections.

Joinder in the arguments is granted as requested.