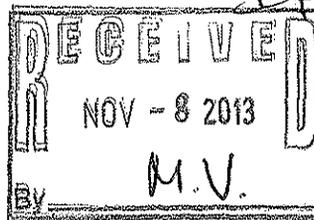


# COALITION OF LA CITY UNIONS

November 7, 2013

Mayor Eric Garcetti and  
Members of Los Angeles City Council  
City Hall, Room 395  
200 N. Spring Street  
Los Angeles, California 90012



Re: Draft Ordinance Suspending LACERS/WPERP Retirement System Reciprocity

Dear Members of the City Council:

The Coalition of Los Angeles City Unions is surprised and dismayed by the Council's consideration of a draft ordinance to suspend reciprocity between the City LACERS and DWP WPERP retirement systems. The ordinance, which arises out of a deal between the DWP and IBEW Local 18, unilaterally imposes new and detrimental benefit and working conditions on employees from other City departments which have never been negotiated with their bargaining representatives.

Suspension of reciprocity as a bone in labor negotiations is egregious and ill-considered policy-making. Suspending reciprocity between LACERS and WPERP would make transfer and advancement between City departments and a full career pension effectively impossible. Employees across City departments – including DWP – have the same employer, are part of the same civil service system, and qualify for their positions through the same examinations. City employment has historically been a place of opportunity for employees to advance through the ranks and to serve the City with increasing experience, responsibility, and loyalty. This ordinance will cost City employees pension benefits and the City its ability to retain its most talented and experienced employees.

Adoption of such an ordinance would also be unlawful, as explained in detail in the attached letter from the Coalition's attorneys to the CAO.

- Suspension of reciprocity is a structural change to LACERS and WPERP, not a matter of plan administration, and cannot be imposed by WPERP or a single City department.
- Suspension of reciprocity violates the retirement and transfer provisions of Coalition MOUs.
- The unilateral suspension of reciprocity violates the Meyers-Milias-Brown Act (MMBA) and Employee Relations Ordinance ("ERO").
- The suspension of reciprocity impairs constitutionally vested pension rights of City employees.

If the City Council adopts the draft ordinance or the City takes any other unilateral action to suspend or modify reciprocity, the Coalition Unions will take all appropriate legal action to protect their rights and the rights of their members.

Very truly yours,

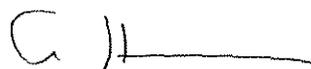
Coalition Principals



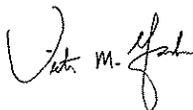
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Chris Hannan  
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Encl: Letter from the Coalition's attorneys to the CAO

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November 7, 2013

**BY EMAIL AND FIRST CLASS MAIL**

Miguel Santana  
City Administrative Officer  
200 N. Main St. Suite 1500  
Los Angeles, CA 90012-4137

Re: Draft Ordinance Suspending LACERS/WPERP Retirement System Reciprocity

Dear Mr. Santana:

This firm represents the Coalition of Los Angeles City Unions.

According to the summary on the CAO's website of the deal between the City and IBEW Local 18, dated August 22, 2013, the City and IBEW Local 18 agreed to an "amendment" of reciprocity between the Water and Power Employees' Retirement Plan ("WPERP") and the Los Angeles City Employees Retirement System ("LACERS") applicable to all future transfers. We also have become aware of Report No. R13-0313, dated October 28, 2013, re Draft Ordinance Amending Chapter 10 of Division 4 of the Los Angeles Administrative Code to Suspend Reciprocity Between the Los Angeles City Employees' Retirement System and the Water and Power Employees' Retirement Plan, and to Make Related Changes.

As is clear from the Draft Ordinance attached to the Report – the LACERS piece of the City/IBEW deal – the suspension of reciprocity is not simply a change to WPERP; it is also a change of retirement benefits and working conditions for members of the Coalition's bargaining units and LACERS who transfer within City employment to the DWP and for DWP employees who transfer into Coalition members' bargaining units. The City has not negotiated these changes affecting benefits and working conditions of City employees represented by Coalition Unions. Under the Charter, the City is the plan sponsor of both WPERP and LACERS. Both plans include City employees. If the City approves the suspension of reciprocity outlined in the Draft Ordinance (applicable to LACERS members) and, presumably, correspondingly in DWP and WPERP documents (applicable to WPERP members), the City's action will constitute a violation of Coalition MOUs and the Meyers-Milias-Brown Act (MMBA) and City's Employee

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Relations Ordinance (ERO). Because the elimination of reciprocity adversely affects the retirement benefits of current City employees who transfer to and from the DWP, the City's impending action also impairs their constitutionally vested retirement benefits.

A significant number of City employees transfer from other City departments to the DWP. Some employees in the process of transferring have been told that they will be placed in the new lower tier of DWP retirement benefits upon their transfer, an apparent effect of the suspension of reciprocity; some have not been told anything. Officials of Coalition members have asked the City questions such as whether these transferring employees will be required to vest in the new DWP lower-tier when they have already vested in LACERS and have been told that the City "doesn't know."

Suspending reciprocity between LACERS and WPERP would greatly constrain the ability of City employees to transfer between City departments make earning a full career pension effectively impossible. Employees across City departments – including DWP – have the same employer, are part of the same civil service system, and qualify for their positions through the same examinations. City employment has historically been a place of opportunity for employees to advance through the ranks and to serve the City with increasing experience, responsibility, and loyalty. Suspending reciprocity will cost the City its ability to retain its most talented and experienced employees.

As you are aware, in 2010, the City Council vetoed action by WPERP and the Board of Water and Power Commissioners to eliminate reciprocity between WPERP and LACERS.

On May 26, 2010, the Board of Administration approved a resolution recommending the suspension of WPERP's reciprocity with LACERS. On September 7, 2010 – following the preparation and presentation of actuarial studies – the Board of Commissioners approved the proposed plan amendment to suspend reciprocity. On September 22, 2010 – acting pursuant to Charter Section 245 – the City Council voted to assert jurisdiction over the Board of Commissioners' action to approve the plan amendment suspending reciprocity. On October 13, 2010, the City Council voted to veto the Board of Commissioner's approval of the plan amendment suspending reciprocity. This veto had the affect of sending the matter back to the Board of Commissioners to reconsider the item; the Board of Commissioners never did so.

On November 17, 2010, four members of the Board of Administration filed a petition for writ of mandate against the City and City Council alleging that the City Council lacked authority to veto the approval of the plan amendment suspending reciprocity. The plaintiffs purported to be acting in their individual and official capacities. By order dated August 21, 2012, the Court allowed amendment of the complaint to add WPERP and the Board of Administration as putative defendants. The *Romero* case is scheduled to go to trial December 3, 2013. The elimination of reciprocity is framed in the City/IBEW deal summary as a settlement of *Romero*.

Among the arguments made by the City in *Romero* is that the plenary authority granted to retirement boards by Article XVI, Section 17 “is limited to administration of the plan and *not to the legislative determinations regarding benefits.*” “Setting benefits is a policy judgment reserved to the political entity that is the plan sponsor,” which in this case is the City.<sup>1</sup> The issues are no different with respect to a suspension of reciprocity as a result of the City cutting a deal with IBEW Local 18 to settle the lawsuit. Neither the governing board of the DWP nor that of WPERP can effect a structural change in LACERS.

The purpose of this letter is to summarize what the Coalition believes to be the principal legal defects of the City elimination of reciprocity and to demand that the City take immediate action to remedy the multiple violations of law.

#### **1. Violation of Coalition MOUs.**

The Coalition MOUs specifically impose a contractual duty to bargain pension changes. The language is plain: “Proposals for major retirement benefit modifications *will be negotiated* . . .” See, e.g., MOU No. 3, Art. 39(B)(emphasis added). It cannot reasonably be argued that suspension of reciprocity between pension systems of two City departments is anything but “major.” If it is disputed, the MOUs further require that the proposal “be treated as a major modification” (*id.*) and therefore be negotiated.

The Coalition MOUs also contain provisions related to transfers between City departments. Using MOU No. 3 (Clerical and Support Services) for example, Article 9 provides for the Personnel Department to give the Union notice of recruitment bulletins and early notice of tentative examination bulletins. Article 24 provides for time off with pay for oral promotional exams given by the City. Article 46 provides for funding of training programs through the Personnel Department. The Civil Service Rules, of course, apply across City employment to members of Coalition Union bargaining units and to DWP employees alike. The rules govern transfer, reversion, promotion, layoff, seniority, etc. The Letter of Agreement between the City and the Coalition Unions in 2009 to help address the City’s budget deficits provides, “The City shall utilize all appropriate layoff avoidance tools, (e.g., transfers, Charter Section 1014 transfers) to avoid layoffs.”

The Draft Ordinance sets new employment conditions for employees who transfer out of Coalition bargaining units and into the DWP and new employment conditions for DWP

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<sup>1</sup>City’s Memo ISO MSJ, 14:6-16 (emphasis in original), 11:20, 5-7. The City cites *City of San Diego v. SDCERS*, 186 Cal. App. 4th 69, 79-80 (2010) in support of this argument. In *City of San Diego*, SDCERS’ attempt to charge the city for underfunding the plan was found to be in excess of SDCERS’ constitutional power to administer benefits. The court wrote, “The scope of the board’s power as to benefits is limited to administering the benefits set by the City.” 186 Cal. App. 4th at 80.

employees who transfer into positions in Coalition bargaining units. That much is clear from the terms of the proposed addition of new Section 4.11095(l) to the Administrative Code:

(l) Suspension of the Reciprocal Retirement Arrangement.  
Employees who change employment from the DWP to other positions with the City that make them eligible for membership in LACERS on or after January 1, 2014, shall not be eligible to participate in the reciprocal retirement arrangement established in this section. Reciprocity on the terms and conditions set forth in this section shall only be provided to those employees who changed employment from the DWP to other positions with the City that made them eligible for membership in LACERS prior to January 1, 2014.

Such changes in subjects governed by the Coalition MOUs violate the MOUs.

**2. Violation of Meyers-Milias-Brown Act (MMBA) and Employee Relations Ordinance ("ERO") – Failure to Meet and Confer in Good Faith.**

As a public agency covered by the MMBA, implemented locally through the ERO, the City has an obligation to meet and confer in good faith with the bargaining representatives of its employees regarding matters within the scope of representation. *See* Gov't Code §§ 3504-05. Each of the Coalition unions is an exclusive representative of a unit of employees under the MMBA to which the City owes this legal obligation to bargain. Changes in retirement benefits have long been recognized as a mandatory subject of bargaining. This is because pension benefits are "an integral part of the entire wage structure." *Inland Steel Co.*, 77 NLRB 1, *enforced*, 170 F.2d 247 (7<sup>th</sup> Cir. 1948), *cert. denied*, 336 U.S. 960 (1949). Additionally, transfer rights also have been found to be a mandatory subject of bargaining. *Grant Joint Union High School District*, PERB Dec. No. 196-E (1980); *United Cerebral Palsy of New York City*, 347 NLRB 603, 607 (2006) (change to transfer policy violates Section 8(a)(5)); *U.S. Ecology Corp.*, 331 NLRB 223, 227-28 (2000) (departure from posting and bidding process unlawful unilateral change).

The City's suspension of reciprocity is a mandatory subject of bargaining because it has a substantial impact on the ability of employees in Coalition bargaining units to transfer between City departments and their consequent working conditions. Just as the City bargained with the DWP, it has an equal obligation to the Coalition Unions. *See Madera Unified School District* (2007) PERB Decision No. 1907, p. 2 (2007) ("PERB decisions have held that future retirement benefits for employees are within the scope of bargaining because they are part of an employee's compensation package and therefore related to 'wages.'"); *County of Sacramento* PERB Decision No. 1943-M, p. 11 (2008) ("Modification of the eligibility criteria [for retirement benefits] directly impacts whether a current employee will receive the future retirement benefit. Thus, this subject falls within the scope of representation.")

The City's unilateral implementation of a suspension of reciprocity is a *per se* violation of the MMBA. *See Vernon Fire Fighters v. City of Vernon*, 107 Cal. App. 3d 802, 823-24 (1980). If the City acts to suspend reciprocity, and/or fails to remedy any actions to suspend reciprocity already taken, the Coalition will immediately file an unfair employment practice charge with the Employee Relations Board ("ERB"). The Coalition will also seek appropriate injunctive relief to restrain the irreparable harm flowing from the City's illegal conduct.

### 3. Vested Right

A public employee's pension is an element of compensation, and the employee's right to pension benefits vests upon the acceptance of employment, although the right to payment of a pension may not mature until certain conditions are met. *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863, 148 Cal.Rptr. 158; *Miller v. State of California* (1977) 18 Cal.3d 808, 815, 135 Cal.Rptr. 386. Public employees earn retirement benefits as deferred compensation as they perform services for their employer, just as they earn wages. *San Bernardino Public Employees Assn. v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1221-22, 79 Cal.Rptr.2d 634. They acquire a vested right to additional pension benefits conferred during their employment. *Betts, supra*, 21 Cal.3d at 866. "A public employee's pension rights are an integral element of compensation." *Olson v. Cory* (1980) 27 Cal.3d 532, 540, 178 Cal.Rptr. 568.

Implied contractual terms, and employees' reliance interests in them, may also create vested rights. *Retired Employees Ass'n of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1177-78 (vested rights to health benefits based on pooling of retired and active employees); *Int'l Brotherhood of Elec. Workers, Local 1245 v. City of Redding* (2012) 210 Cal.App.4th 1114; *Requa v. Regents of the University of Cal.* (2012) 213 Cal.App.4th 213, 227-28.

"[P]ublic employment gives rise to certain obligations which are protected by the contract clause of the Constitution," including pension rights, which "cannot be destroyed, once [they have] vested, without impairing a contractual obligation." *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 851-52; *United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, 1102, 259 Cal.Rptr. 65; *Betts, supra*, 21 Cal.3d at 866; *Miller, supra*, 18 Cal.3d at 814. The impairment of contract caused by a city's suspension of vested benefits is a deprivation of rights under color of state law which gives rise to a claim under 42 U.S.C. § 1983. *Thorning v. Hollister School District* (1992) 11 Cal.App.4th 1598, 1609-10, 15 Cal.Rptr.2d 91, *review denied*. While an employee's vested contractual pension rights may be modified, "[s]uch modifications must be reasonable" in that they "must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." *Betts, supra*, 21 Cal.3d at 864 (emphasis in original). This limitation applies not only to the pension benefits themselves, but also to the contribution scheme in effect when the employment began. *Wisely v. City of San Diego* (1961) 188 Cal.App.2d 482, 485-86; *see also*

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*Int'l Ass'n of Firefighters v. San Diego* (1983) 34 Cal.3d 292 (analyzing claims related to employee contributions under the vested rights doctrine); *Ass'n of Blue Collar Workers v. Wills* (1986) 187 Cal.App.3d 780, 791 (holding that City did not show corresponding benefit to employees when it imposed burden on employees to fully fund past unfunded liabilities of the pension system). This limitation is expressed in Los Angeles City Charter Section 1168(b).

City employees have vested right to retirement calculations *with* reciprocity to encourage movement and portability between departments and other governmental services. Not only is the City acting to impair those retirement benefits, it is doing so without providing comparable new advantages.

This letter is an initial summary of legal positions, based on our investigation to date, and is not intended to be a comprehensive statement of the Coalition's rights and remedies, all of which are expressly reserved.

Very truly yours,



Ellen Greenstone

EG:jc

cc: Mayor and members of City Council  
Coalition Presidents