



PORT OF OAKLAND

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April 19, 2012

**Members of the City Council
City of Oakland
1 Frank H Ogawa Plaza
Oakland, CA 94612**

**RE: Proposed Amendments to City Ordinance 8979 (Municipal Code
§ 2.08.050) Concerning Port of Oakland Personnel Rules and
Classifications**

Dear Council Members:

At the City Council's April 5, 2012 Rules and Legislation Committee meeting, and in response to the Port of Oakland's ("Port") concerns about the City Staff's proposal that the Council amend City Ordinance 8979 ("amendments"), Council Member Brooks suggested that the Port submit a packet to the City Council for its consideration during its May 1, 2012 meeting. Pursuant to Council Member Brooks's request, this letter and the enclosed materials constitute such packet. The Port appreciates the opportunity to submit this packet to the City Council concerning the proposed amendments to City Ordinance 8979 (Municipal Code § 2.08.050) and trusts that the Council will fully evaluate the information while deliberating on the proposed amendments.

In general, the amendments would require the Port's "Personnel Rules and Procedures" to be consistent with and "subordinate" to Ordinance No. 8979, the Civil Service Personnel Manual of the City of Oakland ("Manual") and the Oakland City Charter ("Charter"), and they would further require the Oakland Civil Service Board ("CSB") to determine whether such rules and procedures are "consistent and subordinate" before they become effective. The proposed amendments would also authorize the CSB to make the "final determination" in regards to the creation, alteration and/or elimination of any Port classifications.

During the last six months, the Port and the City have exchanged a series of letters concerning changes to the CalPERS retirement formula for future miscellaneous Port employees (from "2.7% at 55" to "2.5% at 55"), the role of the City and the Port in meeting and conferring with Port bargaining units over the proposed formula change, the resulting tentative agreements reached between the City's

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and the Port's bargaining units, and the proposed amendments. The recent history leading up to the proposed amendments is recounted in the enclosed correspondence and will not be repeated here. Likewise, the Port's legal concerns about the proposed amendments are set forth in its February 8 and March 16 letters and are not repeated in detail.

As you may know, the Port has four bargaining units, and to date (and as the Port understands), the City entered into two separate tentative agreements with Port bargaining units represented by SEIU Local 1021 and by the Western Council of Engineers ("WCE"), one for the retirement formula and the other for the proposed amendments. As further understood by the Port, the City has not entered into agreements with the Port's bargaining units represented by Local 21 IFPTE and by IBEW Local 1245. Copies of the tentative agreements are enclosed.

Importantly, neither the two Local 1021 SEIU tentative agreements nor the two WCE tentative agreements contain language which link agreement to the proposed formula change to the amendments or which make one conditional on the other. They are separate, independent agreements.

Suffice it to say that the Port opposes the proposed amendments to City Ordinance No. 8979 for several compelling reasons.

First, the amendments violate the Charter because they enable the CSB to usurp the Board of Port Commissioner's ("Board") exclusive control and management of the Port Department. (Charter, Art. VII, Section 701) As set forth in the Charter, such control involves the complete and exclusive power to appoint employees and to prescribe and fix their duties, authority and compensation. (Charter, Art. VII, Section 706 (21)) In this instance, the proposed amendments give the CSB the "final determination" in evaluating Port Personnel Rules and Procedures and in the creation, alteration and elimination of Port classifications; in doing so, they inappropriately attempt to eliminate the Board's exclusive power to establish and maintain its own Personnel Rules and Procedures and to create, alter or eliminate classifications, a power the Board has exercised for many, many years. As set forth in the proposed amendments, the CSB's role usurps the Board's "complete and exclusive power" to manage the Port Department, to include Port employees.

In addition, the proposed amendments would require Port personnel rules and procedures to be consistent with and "subordinate" to Ordinance 8979, the Manual and the Charter. The "subordination" requirement squarely conflicts with the Charter. Significantly, the

Charter provides that the provisions of Article VII (which deal with the Port) shall be "liberally construed" (Charter, Art. VII, Section 723) and that its provisions shall "supersede and control all other provisions of the Charter in conflict therewith." (Charter, Art. VII, Section 724; Emphasis added.) These requirements, in combination with the Board's authority to adopt and enforce such ordinances, orders regulations and practices "for the proper administration of its duties and powers, or for the management and government of the Port," do not allow the Port's Personnel Rules and Procedures to be "subordinate" to the Manual or to City Ordinance 8979 nor do they allow the CSB to have oversight over the Board as set forth in the proposed amendments. (See, Charter, Art. VII, Section 706 (27))

Simply put, the proposed amendments violate the Charter.

Second, as a practical matter, the Board's exclusive authority to set Port policy and to manage and control the Port Department through changes in Port personnel rules and/or through the creation, amendment or elimination of classifications will be at risk if Board action is subject to CSB approval (or "final determination"). If the proposed amendments were adopted, the CSB could disapprove a Port personnel rule or the creation, amendment or elimination of a Port classification necessary for the strategic implementation of Port policy. Such CSB action would adversely impact Port customers who expect the Port to timely adjust its operations to respond to customer concerns and/or market forces. As a market participant, the Port must rely on its Board to provide the necessary expertise to ensure that it remains competitive in the marketplace. This expertise is reflected in the Board's policies, including its personnel rules and procedures and job classifications.

As presently written, City Ordinance 8979 effectively balances the Board's exclusive right to manage and control the Port Department with the Charter's mandate that Port employees be included within the City's comprehensive personnel system. This balance manifests itself in the Ordinance's recognition that the Port can establish its own personnel rules and procedures provided they are consistent with the Municipal Code and the Charter. City Ordinance 8979 has worked well over the years, and it continues to work well; there is no need for its amendment.

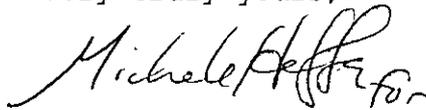
To be sure, the Board recognizes that its employees (with a few exceptions) are part of the City's comprehensive personnel system and that employment with the Port, like that for the City, has been merit based in compliance with the Charter.

Despite any beliefs to the contrary, the Port was ready, willing and able to actively participate at the bargaining table and assist the City as it negotiated with Port bargaining units. The City rejected the Port's offer and would only allow Port representatives to attend essentially as "observers."

The City Council's rejection of the proposed amendments to Ordinance 8979 should not have any financial consequences for the City. It would not effect and has no bearing on CalPERS safety retirement formulas for the City's safety employees or the City's efforts to start a new Police Academy class. Indeed, the City Council approved for final passage on its December 20, 2011 Consent Calendar an Ordinance approving an amendment to the City of Oakland's CalPERS contract providing in part for a new retirement formula and other changes for its safety employees. Such action by the City Council also should not jeopardize the City's tentative agreements pertaining to the "2.5% at 55" retirement formula separately entered into with Port bargaining units represented by SEIU Local 1021 and the WCE nor will it interfere with the City's plans to implement the formula for new City and Port miscellaneous employees. To the extent the City Council's action supersedes the tentative agreements pertaining to the amendments, both the SEIU Local 1021 Memorandum of Understanding with the Port (Article 20A) and the WCE Memorandum of Understanding with the Port (Article 26) contain "Separability and Revisions of Severed Positions" clauses which require the parties to immediately commence negotiations "to ensure that the superseded portions shall be rewritten to conform as nearly as possible to the original intent."

In light of the legal and practical concerns expressed in this correspondence as well as in the attachments, the Port respectfully requests that the City Council reject the proposed amendments to City Ordinance 8979.

Very truly yours,



DAVID L. ALEXANDER
Port Attorney

Enclosures

cc: Board of Port Commissioners
Omar Benjamin
Jean Banker
Denyce Holsey
Marsha Peterson
Farbod Pirouzmand
Michael Mitchell
Daniel S. Connolly

ENCLOSURES

1. A two page letter dated November 7, 2011 from City Administrator Deanna Santana to Port Executive Director Omar Benjamin.
2. A four page letter dated November 10, 2011 from Mr. Benjamin to Ms. Santana.
3. A one page letter dated November 29, 2011 from Ms. Santana to Mr. Benjamin.
4. A two page letter dated January 10, 2012 from Port Corporate Administrative Services Director Denyce Holsey to City Human Resources Manager Darryelle LaWanna Preston.
5. A five page letter dated February 8, 2012 from Mr. Benjamin to Ms. Santana.
6. A four page letter dated March 7, 2012 from City Attorney Barbara Parker to Port Attorney David Alexander.
7. A three page letter dated March 16, 2012 from Mr. Alexander to Ms. Parker.
8. A two page Tentative Agreement dated February 1, 2012 between SEIU Local 1021 and City re: "Civil Service."
9. A three page Tentative Agreement dated February 1, 2012 between SEIU Local 1021 and City re: "ARTICLE 18: Retirement."
10. A two page Tentative Agreement dated February 8, 2012 between Western Council of Engineers and City re: "Civil Service."
11. A one page Tentative Agreement dated February 8, 2012 between Western Council of Engineers and City re: "Retirement."

CITY OF OAKLAND



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Office of the City Administrator
Deanna J. Santana
City Administrator

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November 7, 2011

Mr. Omar R. Benjamin, Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. ~~Benjamin~~,
omas

As you may know, the City of Oakland completed its contract negotiations with miscellaneous and safety employees by July 1, 2011. The negotiations resulted in significant concessions by the unions designed to improve the City's financial position on an immediate and long term basis. An imperative long term strategy that was achieved was the amendment of our retirement formula with the California Public Retirement System (CalPERS), from 2.7% at 55 to 2.5% at 55 and amending the formula from the existing rule of the highest twelve (12) months salary to the highest average annual salary during the last three (3) consecutive years. The Council had its final adoption of the Ordinance for a two (2) tier retirement plan on the November 1, 2011 Consent Agenda. The CalPERS contract covers Port employees. Service Employees International Union (SEIU), Port Chapter Millie Cleveland demanded the Council rescind its final authorization as the union had never met and conferred over the amended retirement terms. Millie Cleveland stated the Port had not proposed to amend retirement benefits for Port employees. Therefore, it would be an Unfair Labor Charge if the Council adopted the amendments to the PERS contract.

It is indisputable that your labor relations staff was aware of the City's intent to amend the retirement plan. The Employee Relations Manager sent Farbod Pirouzmand and Michael Mitchell an email on June 29, 2011 informing them that all miscellaneous unions had agreed to the retirement amendments. On June 30, 2011 Farbod responded with a question "Do you know when the vote on these TA's are?" (*Attachment A*) Ms. Preston called Farbod and informed him the Unions had different dates scheduled for voting. He congratulated her on a job well done. The purpose of sharing the information with your staff was to ensure that this item was placed on the table with miscellaneous Port unions during the Port's contract negotiations. Your staff alleges that they were unaware of this expectation. That is not accurate. Farbod did not advise Ms. Preston in any of his verbal or written communications that the Port would not submit proposals to its unions to amend retirement benefits, nor did he state that the Port's position is that the City Employee Relations staff is responsible for bargaining benefits with Port Unions.

On November 3, 2011, the City's Employee Relations Director was informed that your staff had not placed the amended retirement formula on the table for negotiation and never had the intention of doing so. Ms. Preston was initially notified, by Port staff, that the Port

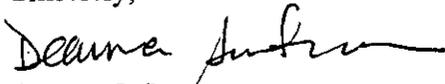
Employer-Employee Relations Ordinance did not require either party to meet and confer with Port Unions on retirement benefits; we could just implement the changes. Later in the discussion Ms. Preston was informed, by Port staff, that it was her job to bargain retirement benefits with the Port Unions. Ms Preston was sent a copy of the Ground Rules between SEIU and the Port and the Port Employer-Employee Relations Ordinance No. 1688 for the purpose of informing her of the ground rules between the parties prevented the introduction of new items after June 29, 2011. (*Attachment B*) When Port staff was advised that not meeting and conferring on a mandatory subject of bargaining would be a violation of California's Meyers Millias Brown Act, the Port staff stated that the entire matter was a City of Oakland problem. I think it is important to point out the Ground Rules between the Port and SEIU were signed on June 29, 2011, the same day Port staff received the signed TA between the City of Oakland and SEIU City chapter regarding the Two Tier Retirement Plan. I reviewed the Port and SEIU Ground Rules, item #11 which states "Neither Party shall submit new proposals, not directly related to current proposals, after 6 sessions following the signing of the ground mles or July 30, 2011 whichever comes sooner". The Port staff had sufficient time to submit a proposal on Two Tier Retirement or inform City staff they would not do so.

The City of Oakland must take the appropriate steps to rectify this matter. Initially, I have directed staff to take the following actions:

- Prepare a Council Report that recommends rescinding the new CalPERS retirement formula.
- Send notification to the Port Unions to meet and confer over a proposed change in retirement benefits and all future communications regarding benefits must be directed to the City of Oakland Employee Relations Divisions.
- Send notice to the City's miscellaneous unions that implementation of the reduced retirement rate for new employees will be held in abeyance, pending the outcome of negotiations with Port unions.

This is an extremely serious situation, and if left uncorrected would have a detrimental impact on the City's long term financial health. I cannot let that occur. Under the authority vested in me through Charter Section Article V, section 504 Duties of the City Administrator; I will take any and all steps to see that this is achieved.

Sincerely,



Deanna J. Santana
City Administrator

cc: Oakland City Council:
Jane Brunner
Pat Kemighan
Nancy Nadel
Libby Schaaf
Ignacio DeLaFuente
Desley Brooks
Larry Reid
Rebecca Kaplan

Board of Port Commissioners:
Pamela Calloway, President
Gilda Gonzales, 1st Vice President
James W. Head, 2nd Vice President
Jakada Imani, Commiissioner
Michael Lighty, Commissioner
Victor Uno, Commissioner
Alan S. Yee, Commissioner



PORT OF OAKLAND

OMAR R. BENJAMIN
Executive Director

November 10, 2011

Deanna J. Santana
City Administrator
Office of the City Administrator
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: City's Amendment of CalPERS Contract; 2.5 @ 55
Retirement Formula; City Negotiations with Port Unions

Dear Ms. ~~Santana~~ *Santana*,

I am in receipt of and had an opportunity to review your November 7, 2011 letter. As an initial matter, I fully understand and appreciate the financial concerns you outlined in your letter and in particular the need to rectify the matter as expeditiously as possible consistent with the requirements set forth in the Meyers Milias Brown Act ("MMBA") and the City Charter ("Charter"). I can assure you and the City that the Port of Oakland and its Board of Port Commissioners will cooperate and assist the City to the extent possible given their authority under both the MMBA and the Charter.

Preliminarily, I wish to bring some procedural concerns to your attention which, when corrected, should help to expedite the process. First, SEIU Local 1021 is one of four unions representing Port bargaining units; the others include IFPTE Local 21, IBEW Local 1245 and the Western Council of Engineers. This is important because the governing body of the public agency that requests a change in its CalPERS' contract must provide to each employee organization affected by the change a "quotation of the approximate contribution to the system that would be required of the agency for that...change." (See, Government Code Section 20463(b).) Such "quotation" must be provided within five days of its receipt by the agency. (See, Government Code Section 20463(b).) As I understand, the City requested a change in its CalPERS contract by letter dated July 22, 2011; in response, CalPERS provided its cost analysis for the change (or "quotation") in a letter dated August 9, 2011. It is also my understanding that the City did not provide such cost analysis to the Port's bargaining units nor did it provide a courtesy copy to the Port. The free flow of information between the Port and the City in a matter like this is crucial to its successful and expeditious resolution, and if

the City has a copy of the cost analysis, I ask that the City forward it to my office. Certainly, if the City needs any information from the Port, please let me know.

Second, as I understand, at some point during the process to amend its CalPERS contract, the City, as the "contracting agency," was required "to fully discharge" all of its obligations under the MMBA with respect to the contract amendments. (See, Government Code Section 20475.) Those obligations would require compliance with the meet and confer process set forth in the MMBA. Thus, in order to expedite the CalPERS contract changes, the City would have been required to assure CalPERS that it had complied with the MMBA with all affected employee organizations, to include the Port's bargaining units. Absent any tentative agreements or the exhaustion of the meet and confer process with the Port's bargaining units, the City as the "contracting agency" would have been unable to provide CalPERS with the assurances it required to effect the contract changes. As I discuss below, the Port is ready, willing and able to assist the City in this meet and confer process and to do so on a joint basis.

As you probably know, Article VII of the Charter establishes the "Port Department" ("Port") and vests the Board of Port Commissioners ("Board") with "exclusive control and management" of the Port. (See, Charter Section 701.) The Charter specifically provides the Board with authority over Port employees. In that regard, the Charter provides that the Board has the authority to employ "employees...as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation...." (See, Charter Section 706(21).) The Charter also authorizes the Port to enter into "contracts, agreements, or stipulations germane to the scope of its powers and duties." (See, Charter Section 706(17).)

Consistent with such explicit Charter authority, the MMBA and with longstanding practice and policy, the Board has exercised exclusive control and management over its represented employees as their employer by meeting and conferring in good faith with their bargaining unit representatives over matters within the scope of representation, by reaching agreement on the terms and condition of their employment, and by memorializing those terms in binding memoranda of understanding.

In conjunction with such authority, the Port enacted its Employer-Employee Relations Ordinance (Ordinance No. 1688; "Ordinance") to provide "orderly procedures for the administration of employer-employee relations between the Port and its employees and employee organizations and for resolving disputes regarding wages, hours and other terms and conditions of employment to the extent that such matters are within jurisdiction of this Board." (Emphasis added; See, Section 2.) Section 3(o) defines "meet and confer in good faith" to be in pertinent part "the performance by duly authorized Port representatives of an employee organization recognized as the majority representative of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment, in an effort to: (1) Reach agreement on those matters within the authority of such representatives, and (2) reach agreement on what will be recommended to the Board of Port Commissioners on those matters within

the decision making authority of the Board. Section 3(t) defines "scope of representation" to mean in part "all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours and other terms and conditions of employment to the extent that such matters are within the jurisdiction of the Port and in accordance with any applicable Civil Service Rules." (Emphasis added.) By definition, the Board is without authority to negotiate with its bargaining units over matters which are outside of its jurisdiction or "not within its decision making authority"; instead, it must "consult in good faith." (See, Section 7.)

As you know, the City, as the "contracting agency," directly enters into contracts with CalPERS over retirement formulas and final compensation calculations (collectively, "retirement formulas"), and such contracts include and apply to Port employees. In that regard, CalPERS retirement formulas are outside the jurisdiction of the Board and thus not within the "scope of representation." While the Board has no authority to meet and confer with its bargaining units over CalPERS retirement formulas, it certainly can meet and confer with its bargaining units over pension matters that are within its decision making authority: for example, employer paid member contributions. In connection with the CalPERS formula change, the Port correctly provided its SEIU Local 1021 bargaining unit with notice about the change and an opportunity to consult in good faith. The Port had no authority to meet and confer with SEIU Local 1021 (as well as its other bargaining unit representatives) over the formula change.

Your letter indicates that the Port received "notice" about the proposed pension formula change and should have met and conferred with its bargaining units about such change, and it seems to suggest that by virtue of such "notice," the City delegated to the Port the authority to bargain over such issue. Charter Section 722 ("Additional Powers") specifically addresses the delegation of authority and provides in pertinent part that: "[t]he City Council, subject to the approval of the Board, may by ordinance confer upon and delegate to the Board, from time to time, such additional powers and duties which may be vested in it, and which it may deem necessary or convenient to carry out the general purposes of such Board." It was not the Port's understanding that it was to undertake negotiating retirement formulas with its bargaining units and, of course, a Section 722 delegation did not occur. However, a Section 722 delegation may prove to be beneficial herein because it would provide both the City and the Port more flexibility at the table and I believe expedite the resolution of this matter.

Alternatively, it is my understanding that the City and the Port jointly met and conferred with the Port's bargaining units over recent changes in the Civil Service Rules. While the Civil Service Rules are obviously outside the decision making authority of the Board and thus, under the Port's Employer-Employee Relations Ordinance, not within the scope of representation, the Port and the City nevertheless combined their efforts at the bargaining table to obtain a positive negotiated result. Under these circumstances, I believe it is imperative, at a minimum, that both the City and the Port have representatives at the bargaining table to meet and confer with the Port's bargaining units over the proposed CalPERS formula changes. This joint effort will enable the City to meet and confer with Port bargaining units over the formula changes, and it will allow

the Port's bargaining representatives to address any other issues raised at the table which are within the scope of representation and subject to the Board's exclusive control and management. Absent Port participation in the bargaining process, the City only has authority to meet and confer with the Port's bargaining units over the proposed formula change. I believe that a successful, expeditious resolution of this process requires a joint effort by the City and the Port at the table.

I fully appreciate the significance of this matter and its time sensitivity, and for the reasons outlined above, I believe that a successful, expeditious resolution requires a joint effort at the table by the Port and the City which will maximize negotiating flexibility and comply with both the charter and the MMBA. Finally, I also believe that this episode provides both the Port and the City with the opportunity to improve our communications on labor relations matters so we can avoid this kind of dispute in the future. I look forward to talking to you about these matters at your earliest convenience.

Very truly yours,



Omar R. Benjamin
Executive Director

cc: Oakland City Council:
Jane Brunner
Pat Kernighan
Nancy Nadel
Libby Schaaf
Ignacio DeLaFuente
Delsey Brooks
Larry Reid
Rebecca Kaplan

Board of Port Commissioners:
Pamela Calloway, President
Gilda Gonzales, 1st Vice President
James W. Head, 2nd Vice President
Margaret Gordon, Commissioner
Michael Lighty, Commissioner
Victor Uno, Commissioner
Alan S. Yee, Commissioner

CITY OF OAKLAND



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November 29, 2011

Mr. Omar Benjamin, Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. Benjamin,

Thank you for your letter of November 10, 2011. I appreciate your recognition of the significant issues created by the fact that Port employees have not yet agreed to the second tier retirement benefits negotiated with the City's other miscellaneous bargaining units and your willingness to partner with the City to complete that process as soon as possible.

City staff and outside counsel have been in touch with SEIU, Local 21, IFPTE, IBEW Local 1245, and WCE to set dates for negotiations (or in the case of IFPTE, informal discussions) and have provided Port staff with copies of the CalPERS actuarial valuation on the second tier retirement. Based on your letter, we have informed the exclusive representatives that the Port's Employer-Employee Relations Ordinance limits the scope of representation for the Port to "wages, hours and other terms and conditions of employment to the extent that such matters within the jurisdiction of the Port" and that retirement is not within the decision-making authority of the Board. Therefore, we have proposed direct negotiations between the City and the exclusive representatives. However, I understand that you have requested that members of the Port's Human Resource Staff be a part of the City's bargaining team for negotiations over the second tier retirement benefit.

I am not averse to the inclusion of members of the Port Human Resources Department on the bargaining team. However, I would like to understand the role that you expect your staff to play in these negotiations, so that I may consider your suggestion and, more importantly, to ensure that our roles are all clearly defined going into these discussions. Please contact me at your earliest convenience to discuss, I look forward to our meeting this week.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanna J. Santana".

Deanna J. Santana
City Administrator

cc (via e-mail only):

Barbara Parker, City Attorney
Andrea Gourdine, Human Resources Director
Lawanna Preston, Human Resources Manager
Charles Sakai





PORT OF OAKLAND

DENYCE HOLSEY
Director of Administration

January 10, 2012

VIA FACSIMILE AND REGULAR MAIL (510) 238-2223

Darryelle LaWanna Preston
Human Resources Manager
City of Oakland
Department of Human Resources (DHRM)
Lionel J. Wilson Building
150 Frank Ogawa Plaza
2nd Floor
Oakland, CA 94612

Re: City's Amendment of CalPERS Contract; 2.5 @ 55
Retirement Formula; City Negotiations with Port Unions

Dear Ms. Preston:

Thank you for the opportunity to meet with you and City representatives regarding "second tier retirement benefits" on December 20th. This letter is intended to memorialize the outcome of our discussions. During that meeting, the City provided the Port with a document entitled "Ground Rules for Negotiations." The City has "initiated bargaining" with the Port's bargaining units over "second tier retirement benefits". The Ground Rules specify that and if the Port wishes to participate in those negotiations, it must do so as an "observer" only. The "Ground Rules" also list other "rules" governing the Port and its "observer" status at the bargaining table.

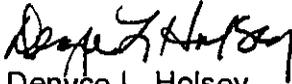
As Mr. Benjamin mentioned in his November 10 letter to Ms. Santana, we believe that a successful, expeditious resolution of the "second tier retirement" negotiations requires a joint effort at the table by the Port and the City which will maximize negotiating flexibility and comply with both the Charter and the MMBA. The "observer role" set out in the "Ground Rules" is not the type of role envisioned by the Port for this process. The "Ground Rules" have effectively made unfeasible for what was hoped to be a collaborative partnership between the Port and the City for these negotiations.

Unfortunately, given the restrictions outlined in the "Ground Rules" and as discussed at the December 20 meeting, the Port cannot participate in the "second tier retirement benefit negotiations." In that regard, the Port intends to advise its unions about these developments as well.

However, I do want to reassure you that the Port, the Port's Human Resources staff and the Port's Board of Port Commissioners will cooperate and assist the City to the extent possible given the authority under the Charter, the Port's Employer-Employee Relations Ordinance and the MMBA.

Finally, I respectfully request that the City provide copies to the Port of any documents exchanged at the bargaining table, to include but not be limited to any documents pertaining to costs or anticipated dates of implementation or tentative agreements and any documents received from the Port's unions.

Best Regards,



Denyce L. Holsey
Director, Corporate Administrative Services

cc: Deanna Santana, City of Oakland City Administrator
Scott Johnson, City of Oakland Assistant City Administrator
Andrea Gourdine, City of Oakland Personnel Director
Omar Benjamin, Port of Oakland Executive Director
Jean Banker, Port of Oakland Deputy Executive Director
Marsha Peterson, Port of Oakland Labor Advisor to Executive Director
Daniel Connolly, Port of Oakland Deputy Port Attorney



OMAR R. BENJAMIN
Executive Director

February 8, 2012

Deanna Santana
City Administrator
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: Proposed Amendment to City of Oakland Ordinance Number 8979

Dear Ms. Santana: *Deanna,*

I recently learned that City of Oakland ("City") staff intends to recommend to the City Council that the City Council amend City of Oakland Ordinance Number 8979 ("Ordinance") as part of a tentative agreement with SEIU Local 1021 concerning the 2.5% at 55 formula. In general, these proposed amendments would require the Port of Oakland's ("Port") "Personnel Rules and Procedures" to be "consistent with and subordinate to; [sic] this ordinance, the Civil Service Personnel Manual of the City of Oakland, and the City Charter." The proposed Ordinance amendments would further require the Civil Service Board to determine whether the Port's Personnel Rules and Procedures are "consistent and subordinate" before they become effective, and would also apparently authorize the Civil Service Board to make "the final determination" in regards to "the creation, alteration and/or elimination of a classification."

For the reasons outlined below, the Port believes that the proposed Ordinance amendments squarely conflict with the express provisions of the Charter of the City of Oakland ("Charter") and are neither necessary nor reasonable. The Port respectfully requests that the City Council not amend the Ordinance.

Section 2.08.050 (Port Department) of the Oakland Municipal Code discusses Port personnel rules and procedures for Port employees and provides as follows:

"The Board of Port Commissioners is authorized to establish personnel rules and procedures consistent with this chapter and the Charter and to provide for the administration of such rules for employees of the port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this Chapter, shall remain in effect with respect to Port employees."

As you know, the City has been meeting and conferring with the Port's unions over the 2.5% at 55 pension formula; in conjunction with those negotiations, SEIU submitted a proposal (a copy is attached) which provides as follows:

"The Union will accept the changes to the CalPERS contract provided that the Oakland City Council amends City of Oakland Ordinance Number 8979 C.M.S. The Union proposes the following amendment.

City of Oakland Ordinance Number 8979—Proposed Language

The Board of Port Commissioners of the City of Oakland is hereby authorized to establish and maintain personnel rules and procedures consistent with and subordinate to; [sic] this ordinance, the Civil Service Personnel Manual of the City of Oakland, and the Charter of the City of Oakland. The Board of Port Commissioners may initiate the adoption of such rules and procedures, however no rule or procedure can take effect until such time as the Civil Service Board of the City of Oakland determines that such rule or procedure is in compliance with and subordinate to the Civil Service Personnel Manual of the City of Oakland, this ordinance and the City Charter of the City of Oakland.

The final determination in the creation, alteration and/or elimination of a classification and the right to determine whether a classification will be "exempt" from the classified civil service system resides in the Civil Service Board of the City of Oakland."

The proposed changes to the Ordinance inappropriately attempt to eliminate the Port's independent authority to establish and administer personnel rules for its employees and to create, alter or eliminate Port classifications. The Port's independent authority in this regard is established by the Charter.

The Charter established the Port Department to, among other matters, "promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation" (Charter, Art. VII, Section 700) and vests the Board of Port Commissioners ("Board") with the "exclusive control and management of the Port Department." (Charter, Art. VII, Section 701)

Importantly, Article VII, Section 706 of the Charter provides in pertinent part that the Board "shall have the complete and exclusive power":

....
" (4) to have control and jurisdiction of . . . the "Port Area" and enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development, and in carrying out the powers elsewhere vested with the Board;

....
" (17) to enter into contracts, agreements, or stipulations (other than leases) germane to the scope of its powers and duties;

" (18) to let all work by contract, or order it be done by any labor, as the Board may determine;

....
" (21) to employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of

employment in the permanent service of the Board shall be created by ordinance duly passed;

...
(27) to adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the port, and its facilities;

...
(29) to have and exercise on behalf of the City all the rights, powers and duties in respect to the subject matters herein provided for, that are now or which may hereafter be vested in the City, or any of its departments or officers, or which may be provided for by general law;

...
(30) to do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any of the provisions of this article, and to exercise all powers not in conflict with the Constitution of the State, or with this Charter, germane to the scope of its powers, purposes and duties."

The Charter also provides for a "comprehensive civil service system" (Charter, Art. IX, Section 900(a)) which includes Port employees (Charter, Art. VII, Section 714). Art. VII, Section 723 of the Charter further provides that "all the provisions of this Article shall be liberally construed."

The Charter makes clear that these Port-specific provisions have superiority over any other provisions of the Charter. Specifically, Section 724 of the Charter discusses supersession and specifically provides that:

"The provisions of this article shall supersede and control all other provisions of the Charter in conflict therewith. To all other extent, the powers, duties, and functions heretofore vested in the Council, or any of the officials, boards, or departments of the City, shall be unimpaired."

The Charter explicitly vests the Board with the complete and exclusive power, control and management of the Port; the Port is authorized to employ and appoint "employees" to help it carry out its functions. Not surprisingly, the Charter is replete with references to the Port's "employees" and to the Port's "places of employment." (Charter, Sections 706(21), 714, 717(3), 718(6).) These provisions trump any conflicting Charter sections.

Most important, and concomitant with its authority to "employ and appoint" employees, the Board possesses the explicit authority to "prescribe and fix [its employees] duties, authority and compensation." (Charter, Section 706(21).)

Over the years, the Board has exercised such authority by establishing and administering its own Personnel Rules and Procedures pertaining to all aspects of employment for its employees, and it has included the creation, amendment and/or elimination of classifications at the Port. All of this was accomplished consistent with the Charter and pursuant to Oakland Municipal Code Section 2.08.050. This code section recognized and deftly balanced the Port's exclusive authority to manage and control its employees within the context of the City's comprehensive personnel system by enabling the Port "to establish personnel rules and procedures consistent with this Chapter and the Charter and to provide for the administration of such rules for

employees of the Port Department." The Board exercised this authority in 1978 when it adopted the Port Personnel Rules under the authorization of the Ordinance. In doing so the Board acted in compliance with the City Council's directives and only after consultation with the Civil Service Board. In the over 30 years that have since passed, the City Council has never modified the authorization provided by the Ordinance, included when it amended other provisions of the Ordinance in 1995.

The currently proposed amendments to Oakland Municipal Code Section 2.08.050 inappropriately attempt to strip the Board of its exclusive authority by making the Port's Personnel Rules and Procedures "subordinate" to the Ordinance, the Civil Service Personnel Manual and the Charter; by requiring Civil Service Board determination that the Port's rules and procedures are in "compliance with and subordinate to" the Ordinance, the Civil Service Personnel Manual and the Charter before their adoption can become effective; and, by requiring the Civil Service Board to make the final determination regarding the "creation, alteration and/or elimination" of a Port classification. While the proposed Ordinance amendments also include language that "the right to determine whether a classification will be exempt from the classified civil service system resides in the Civil Service Board of the City of Oakland," such language appears to be consistent with that set forth in Art. IX, Section 902(f) of the Charter.

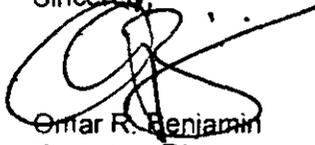
The proposed Ordinance amendments are neither necessary nor reasonable. Pursuant to its Charter authority and well established practice, the Board has independently adopted and revised its own set of Personnel Rules and Procedures consistent with those for the City, and it has independently created, amended and deleted Port classifications. That these practices have occurred for decades is explicit recognition by the City of the Port's exclusive authority to manage and control its employees within the City's Civil Service system. In order to continue its efficient and economical operation of the Port, the Board requires the independence granted it by the Charter to control and manage its employees, many of whom possess unique skill sets and experience required by the Port for its Maritime or for its Aviation operations. Notwithstanding such independence, the Port has collaborated with the City in recent years to identify "common classifications" and will continue to do so as necessary.

The proposed Ordinance amendments also violate Article I, Section 106 of the Charter, which provides that the "City shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter..." As a general principle, ordinances are invalid if they conflict with a city's charter; "an ordinance can no more change or limit the effect of a charter than a statute can modify or supersede a provision of the state Constitution." Lucchesi et al. v. City of San Jose (1980)104 Cal.App.3d 323, 328. In this instance, the proposed Ordinance amendments usurp the Board's exclusive authority "to employ and appoint employees" and to "prescribe and fix their duties, authority and compensation" (Article VII, Section 706(21)), "to adopt and enforce such ordinances, orders regulations and practices" as are necessary for the management and government of the Port (Article VII, Section 706(27)), and "to have and exercise on behalf of the City all the rights, powers and duties in respect to the subject matters herein provided for" that are vested in the City or any of its departments or officers (Article VII, Section 706(29)). Importantly, for purposes of analysis, Section 723 provides for the "liberal construction" of Art.VII and Section 724 provides that Art.VII's provisions "shall supersede and control all other provisions of the Charter in conflict therewith...."

In consideration of the above, I respectfully request that City staff not recommend to the City Council that it amend the Ordinance. While I do recognize the financial significance of the 2.5% at 55 pension formula, I fail to understand the connection, if any, between the formula and the need to amend a long standing Ordinance governing the Port and its personnel. Nevertheless, the Port is certainly willing to do what it can consistent with the City Charter and other applicable laws to assist the City in achieving a satisfactory resolution without amending the Ordinance.

I would like to meet with you at your earliest convenience to review the issues discussed in this letter, and I will be in contact with your office to schedule such meeting. Of course, should you have any questions or concerns in the interim, please do not hesitate to contact me.

Sincerely,



Omar R. Benjamin
Executive Director

cc: Pamela Calloway, President
Gilda Gonzales, 1st Vice President
James W. Head, 2nd Vice President
Margaret Gordon, Commissioner
Victor Una, Commissioner
Alan S. Yee, Commissioner
Oakland City Attorney, Barbara Parker
Jean Banker
David L. Alexander
Michele Heffes
Dan Connolly
Marsha Peterson
Denyce Holsey

CITY OF OAKLAND



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Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
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March 7, 2012

DD: (510) 238-3865

via email dalexander@portoakland.com
and U.S. mail

David Alexander, Port Attorney
Port of Oakland
530 Water Street
Oakland, CA 04604-2064

Re: Proposed Amendment to City of Oakland Ordinance Number 8979

Dear Mr. Alexander:

I am responding on behalf of the City Administrator to Port Executive Director Benjamin's February 8, 2012 letter ("Letter") regarding the City of Oakland's ("City") proposed amendment to City Ordinance Number 8979 ("Ordinance No. 8979"). (See Attachment 1) Contrary to the Port of Oakland's ("Port") belief, the proposed Amendment is consistent with and comes squarely within the express terms of the Charter of the City of Oakland ("Charter"). The Charter specifically limits the Port's authorization with respect to establishing personnel rules and procedures. Given the limitations placed on the Port, the Port's contention that the proposed Amendment attempts to eliminate the Port's independent authority is misplaced.

The Port's interpretation of the Charter violates the cardinal rules governing statutory interpretation.¹ Indeed, in support of its challenge to the proposed Amendment, the Port's suggestion that the Charter "vests the Board with the complete and exclusive power, control and management of the Port" thereby trumping any other provisions of the Charter is not supported by the express terms of the Charter. First, the Charter does not vest the Port with total independent/exclusive power but, expressly limits the powers of the Port (*see e.g.* Charter, §§ 700 [establishing the Port as "a department of the City"], 706 (21) [limitation as to employment/appointment and attendant terms/conditions of employment], 714 [inclusion within the City's personnel system except with respect to limited exclusion of specified personnel], Art. IX. [enforcement by Civil Service Board]). Second, the Charter expressly limits the Port's authority to administer policies, procedures, rules and regulations over employees to particular classifications/categories enumerated in Sections 706 (21), 714 and 902(c) and (e) of the Charter;

¹ Interpretation of a city charter is governed by the same rules as interpretation of a statute. *Currier v. City of Roseville*, 4 Cal.App.3d 997, 100 i (1970).

David Alexander, Port Attorney
Re: Proposed Amendment to City of Oakland
Ordinance Number 8979
March 7, 2012
Page 2

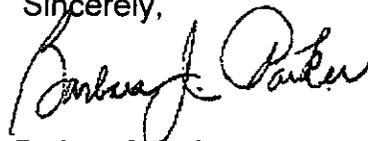
i.e., Executive Director and two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, Chief Wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling or checking of cargo and freight. The Charter provides that all other Port employees are included in and subject to the Civil Service System. (*Id.* §§ 714, 902.) Notably, all exemptions not specified in the Charter must be approved by the Civil Service Board. (*Id.* § 902(f).) Specific charter provisions such as these control over more general language on the same subject. *Domar Elec. v. City of Los Angeles*, 29 Cal.App.4th 1073, 1079 (1993).

The Port's claim that the Amendment attempts to eliminate the Port's authority over its employees by making them subject to the Civil Service System is predicated on the erroneous conclusion that all Port employees are exempt from the Civil Service System. This conclusion conflicts with the Charter, which, as shown above, expressly limits the Board's exclusive control over Port employees to specific classifications and includes all other Port employees in the Civil Service System. (Charter, §§ 714; 902.)² The Amendment is appropriate and consistent with the Charter and the exercise of the City's authority.

To the extent that the Port relies upon Oakland Municipal Code Section 2.08.050 (the codification of Ordinance No. 8979), this is also of no avail. As the City's governing body, the Council has specific authority under the Charter to exercise the corporate powers of the City, including all powers of legislation in municipal affairs; i.e., adopting and amending ordinances. (Charter, § 207; *see also id.* §§ 724, 902.) Pursuant to this authority, the Council adopted and can now amend Ordinance No. 8979.

If the Port still wishes to schedule a time to meet and discuss the Amendment, please contact my office.

Sincerely,



Barbara J. Parker
City Attorney

² Consistent with these Charter provisions, the Civil Service Personnel Manual expressly excludes exempt Port employees. (Civil Serv. Pers. Manual at Intro. ("The competitive civil service consists of all employees who are not in positions exempted by action of the Civil Service Board or exempted by section 902 of the City Charter . . ."), and §§ 1.01(m), 3.01 (excluding from the definition of the "Competitive Civil Service" all "positions specifically exempted from the competitive civil service by Section 902 of the Charter or otherwise exempted by the Board.")) Indeed, the Civil Service Manual expressly states that in any case of conflict between the manual and the Charter, "the Charter shall prevail." (Manual at Intro.)

David Alexander, Port Attorney
Re: Proposed Amendment to City of Oakland
Ordinance Number 8979
March 7, 2012
Page 3

cc: Deanna J. Santana, City Administrator
Omar Benjamin, Port Executive Director
Pamela Calloway, President
Gilda Gonzales, 1st Vice President
James W. Head, 2nd Vice President
Margaret Gordon, Commissioner
Victor Uno, Commissioner
Alan S. Yee, Commissioner

659598

David Alexander, Port Attorney
Re: Proposed Amendment to City of Oakland
Ordinance Number 8979
March 7, 2012
Page 4

ATTACHMENT 1

Amendment to Ordinance No. 8979:

The Board of Port Commissioners of the City of Oakland is hereby authorized to establish and maintain personnel rules and procedures consistent with and subordinate to this ordinance, the Civil Service Personnel Manual of the City of Oakland, and the Charter of the City of the City of Oakland. The Board of Port Commissioners may initiate the adoption of such rules and procedures, however no rule or procedure can take effect until such time as the Civil Service Board of the City of Oakland determines that such rule or procedure is in compliance with and subordinate to the Civil Service Personnel Manual of the City of Oakland, this ordinance and the City Charter of the City of Oakland.

The final determination in the creation, alteration and/or elimination of a classification and the right to determine whether a classification will be "exempt" from the classified civil service system resides in the Civil Service Board of the City of Oakland.



DAVID L. ALEXANDER

Port Attorney

Sender's Tel. No.: (510) 627-1340

Sender's Fax No.: (510) 444-2093

Sender's E-Mail: dalexander@portoakland.com

March 16, 2012

Ms. Barbara J. Parker
City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, CA 94612

Re: Proposed Amendment to the City of Oakland Ordinance Number 8979

Dear Ms. Parker:

This letter responds to your March 7, 2012 letter regarding the proposed Amendment to City of Oakland ("City") Ordinance Number 8979 ("Amendment").

You are correct that the same principles that apply to statutory construction also apply to the interpretation of city charter provisions. See Amtz v. Superior Court (2010) 187 Cal.App.4th 1082, 1092, fn. 5. Consistent with such principles, the various parts of a statutory enactment must be harmonized by also considering the particular clauses or sections in the context of the statutory framework as a whole. Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230. However, and as will be explained below, it appears that certain sections of the Charter of the City of Oakland ("Charter") were overlooked in your statutory analysis.

Equally important is the principle that the Charter operates not as a grant of power but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the City is assumed to possess. City of Oakland v. Williams (1940) 15 Cal.2d 542, 550.

Within the context of those general principles, and as noted in Port Executive Director, Omar Benjamin's February 8, 2012 letter to Deanna Santana, the Charter established the Port Department ("Port") to ensure the "comprehensive and adequate development of the Port through continuity of control, management and operation..." (Charter Section 700) and vested the Board of Port Commissioners ("Board") with "exclusive control and management of the Port Department." (Charter Section 701) While Mr. Benjamin also referenced and discussed in his letter the liberal construction requirement found in Charter Section 723 and, more significantly, the supersession requirement set forth in Charter Section 724, your March 7 letter failed to address – or

even mention – either provision. Your discussion of the various Charter sections, and your application of the “cardinal rules governing statutory interpretation,” fail to account for the two very specific, and directly applicable, elements of “statutory framework” provided by Charter Sections 723 and 724. Accordingly, your analysis and conclusions are flawed.

When the Board’s authority, as set forth in Article VII of the Charter, is read with a liberal construction as required by Section 723, and is harmonized with the supersession requirement of Section 724, the proposed Amendment contradicts the express authority provided to the Port Board by the Charter. As specifically noted in Mr. Benjamin’s February 8 letter, the proposed Amendment usurps the Board’s exclusive authority to “employ and appoint employees” and “to prescribe and fix their duties, authority and compensation” (Charter Section 706(21)), “to adopt and enforce such ordinances, orders, regulations and practices as are necessary for the management and government of the Port, and its facilities” (Charter Section 706(27)), and to “have and exercise on behalf of the City all the rights, powers and duties in respect to the subject matters herein provided for that are vested in the City or any of its departments or officers or which may be provided for by general law.” (Charter Section 706 (29)) If anything, the Charter explicitly limits and restricts the ability of the City to proscribe the Board’s powers and duties to [exclusively] manage and control the Port, including governance of employees of the Port.

Your letter suggests that the Port’s ability to employ, manage and direct its employees is limited to employees exempt from the civil service. *See*, March 7 Letter at pages 1 – 2. Yet your letter fails to cite any Charter provision establishing this limitation. Rather, the Sections of Article 700 enumerating the Port’s autonomy and authority over its operations and personnel are stated broadly. The Charter does not limit these rights and responsibilities to “exempt” personnel only. Moreover, as noted, these provisions are to be “liberally construed” and “supersede” contradictory sections, thereby buttressing the Port’s authority over *all* personnel at the Port.

Subject to this “statutory framework” and consistent with current City Ordinance No. 8979, the Port possesses the authority to establish and maintain its own personnel rules consistent with those for the City.

Your letter appears to overstate, or misunderstand, the Port’s position on classifications of personnel employed at the Port. On page 2 you state that the Port has formed an “erroneous conclusion that all Port employees are exempt from the Civil Service System.” The Port does not currently, nor has ever, taken that position. In contrast, the Port has always maintained that all of its employees, except those expressly exempted by a provision of the Charter, are included within the classified civil service. These employees have civil service rights including the ability to appeal adverse decisions to the Civil Service Board. Again, this underscores the fact that the Port’s ability to create and maintain its own personnel rules – pursuant to the authority granted

by the Charter – is not inconsistent with the notion of a comprehensive civil service system.

Finally, your letter's assertions about the Charter in general, and about the Charter's express limitations on the Board's exclusive control over Port employees in particular, are contrary to thirty plus years of practice and experience. Over that time, and consistent with its commercial demands, the Port has created classifications without Civil Service Board approval, has enacted and revised its own Personnel Rules and has collectively bargained with its bargaining units. All of this was accomplished and is currently being accomplished within the context of the City's Civil Service System. While not explicitly addressed in your letter, the City's interpretation and application of the Charter could have potentially serious adverse consequences for every Port employee in a classification that was not "appropriately created" under the Charter and accordingly who thereby may hold a position in an "invalid" classification.

Accordingly, there is no need to amend Ordinance No. 8979, and the proposed Amendment violates the Charter. I would like to meet and discuss this further. In the interim, since it was omitted from your initial letter, I think it would be beneficial for the City to comment on the applicability of Charter sections 723 and 724 within the "statutory framework" of the Charter.

I look forward to your response. Of course, should you have any questions or concerns, please feel free to contact me.

Very truly yours,



David L. Alexander
Port Attorney

cc: Board of Port Commissioners:
Pamela Calloway, President
Gilda Gonzales, 1st Vice President
James W. Head, 2nd Vice President
Margaret Gordon, Commissioner
Victor Uno, Commissioner
Alan S. Yee, Commissioner

Omar Benjamin, Port Executive Director
Deanna J. Santana, City Administrator
Denyce Holsey
Marsha Peterson
Daniel Connolly

**Tentative Agreement
Civil Service
February 1, 2012**

It is the intention of the parties that the City have a unified personnel system for all non-exempt City employees, including those employed by the Port of Oakland (Department 46) and that the Civil Service Board of the city of Oakland have oversight of all personnel functions, including the adoption of personnel rules, and the establishment, modification, and elimination of classifications. Therefore, the parties agree to modify Section 2.08 of the Oakland Municipal Code as follows:

2.08.050 Port Department

Consistent with Section 714 of the Charter of the City of Oakland, all employees of the Port Department, except for those specifically exempted by Charter, procedures established by the Charter, or action of the Civil Service Board, shall be included within the personnel (civil service) system of the City.

Subject to the approval of the Civil Service Board, The Board of Port Commissioners is authorized to establish personnel rules and procedures consistent with this chapter, and the Charter and to provide for the administration of such rules for employees of the Port Department. Any such rules and procedures shall be consistent with and subordinate to: (1) the City Charter, (2) this chapter, and (3) rules adopted by the Civil Service Board (Personnel Manual) (collectively, "City Civil Service Rules"). In the event of any conflict between the Port personnel rules and procedures and the City Civil Service Rules, the City Civil Service Rules shall control.

Personnel rules and procedures promulgated by the Board of Port Commissioners shall not be effective until approved by the Civil Service Board. The Civil Service Board may approve such personnel rules and procedures at any public meeting, by simple majority vote finding that the rules and procedures are consistent with the City Civil Service Rules.

The Board of Port Commissioners has no authority to create, modify, or eliminate any classification subject to the personnel system. However, it may propose that the Civil Service Board establish, modify, or eliminate any classification included within the personnel system of the City and utilized by the Port Department. The Civil Service Board retains the sole authority to establish, modify, or eliminate any classification within the personnel system of the City and to determine whether any classification (not specifically exempted by Charter) shall be exempt from the personnel system. However, to the extent permitted by law, classifications not included in the "Common Classes" list in Appendix B

City of Oakland
And
SEIU, Local 1021

to the City's Personnel Manual shall remain in effect unless modified or eliminated by the Civil Service Board.

~~Until the Board of Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this chapter, shall remain in effect with respect to Port employees.~~

February 1, 2012

For the Union:

Melvin Chumlam

February 1, 2012

For the City:

D LaWanna Proston

City of Oakland
and
SEIU Local 1021, Port Chapter

Tentative Agreement
ARTICLE 18: Retirement
February 1, 2012

ARTICLE 18 - RETIREMENT

18.A Employer Contribution

The Port shall contribute, as the employer contribution, on behalf of an employee who is a member of the Public Employees' Retirement System, (~~P.E.R.S.~~ "PERS"), the designated percent of the regular salary for retirement purposes of such employee, as determined with applicable State law.

18.B Employee Contributions

The Port shall contribute, on behalf of an employee who is a member of the Public Employees' Retirement System ("PERS"), the designated percent of the regular salary for retirement purposes of such employee, as determined in accordance with applicable state law.

The Port will pick up the employee's normal contribution to PERS ("employer paid member contribution" or "EPMC").

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the Port or any penalty that may be imposed therefore.

The Port agrees to report the Port's payment of the EPMC as special compensation in accordance with Government Code Section 20023(c)(4) commencing November 1, 1995.

18.C Current P.E.R.S. Benefits

The Port currently provides the following benefits as set forth in the City's agreement with Public Employee's Retirement System:

18.C.1 Military Services Credited as Public Service. Up to four (4) years of military service can be granted for time during which a member served continuously with the active Armed Forces or the Merchant Marine plus a record of rehabilitation, plus six (6) months thereafter. The member is required to contribute employee and employer contributions, except that service rendered prior to September 1, 1970 may be granted at no cost to the member.

City of Oakland
and
SEIU Local 1021, Port Chapter

18.C.2 One-Year Fiscal Compensation. The retirement allowance of all current bargaining unit members is will continue to be based on the twelve (12) highest paid consecutive months under the Plan.

The parties agree that the City may contract with CalPERS to establish a second tier retirement benefit as set forth in Section 18.C.4, below. Any bargaining unit member whose first day of employment occurs after the City amends its contract with CalPERS shall be subject to final compensation in accordance with Government Code Section 20037 which means the highest average annual compensation earnable by a member during the three consecutive years of employment immediately preceding the effective date of his or her retirement.

18.C.3 Automatic One-Half Continuance. The beneficiary receives one-half (1/2) the amount of the retiree's allowance after the death of the retired member with no reduction in retirement allowance during the life of the retired members.

18.C.4 Benefit Factor. The percent of retirement benefit for each year of service is determined by age at retirement and the benefit factor increases with each quarter of year of attained age between the ages of 50 and 55. Age fifty (50) has a benefit factor of 2.00 percent per year of service; age fifty-five (55) has a benefit factor of 2.70 percent per year of service.

As soon as practicable, the City shall amend its contract with PERS to provide any bargaining unit member whose first day of employment occurs after the City amends its contract with CalPERS the 2.5% at 55 retirement plan.

City of Oakland
and
SEIU Local 1021, Port Chapter

18.C.5 Not Eligible to Retire at the Time of Death. The beneficiary will receive a refund of the member's contributions plus interest, and up to six (6) months' pay (the sum of one month's salary rate for each year of current service to a maximum of six months).

February 1, 2012

For the Union:

Michelle Anderson

For the City:

D. Louanna Rustin

For the Port

City of Oakland
and
Western Council of Engineers

EXHIBIT B

**Tentative Agreement
Civil Service
February 8, 2012**

It is the intention of the parties that the City have a unified personnel system for all non-exempt City employees, including those employed by the Port of Oakland (Department 46) and that the Civil Service Board of the City of Oakland have oversight of all personnel functions, including the adoption of personnel rules, and the establishment, modification, and elimination of classifications. Therefore, the parties agree to support modification of Section 2.08 of the Oakland Municipal Code as follows:

2.08.050 Port Department

Consistent with Section 714 of the Charter of the City of Oakland, all employees of the Port Department, except for those specifically exempted by Charter, procedures established by the Charter, or action of the Civil Service Board, shall be included within the personnel (civil service) system of the City.

Subject to the approval of the Civil Service Board, The Board of Port Commissioners is authorized to establish personnel rules and procedures consistent with this chapter, and the Charter and to provide for the administration of such rules for employees of the Port Department. Any such rules and procedures shall be consistent with and subordinate to: (1) the City Charter, (2) this chapter, and (3) rules adopted by the Civil Service Board (Personnel Manual) (collectively, "City Civil Service Rules"). In the event of any conflict between the Port personnel rules and procedures and the City Civil Service Rules, the City Civil Service Rules shall control.

Personnel rules and procedures promulgated by the Board of Port Commissioners shall not be effective until approved by the Civil Service Board. The Civil Service Board may approve such personnel rules and procedures at any public meeting, by simple majority vote finding that the rules and procedures are consistent with the City Civil Service Rules.

The Board of Port Commissioners has no authority to create, modify, or eliminate any classification subject to the personnel system. However, it may propose that the Civil Service Board establish, modify, or eliminate any classification included within the personnel system of the City and utilized by the Port Department. The Civil Service Board retains the sole authority to establish, modify, or eliminate any classification within the personnel system of the City and to determine whether any classification (not specifically exempted by Charter) shall be exempt from the personnel system. However, to the extent permitted by law, classifications not included in the "Common Classes" list in Appendix B

NEW

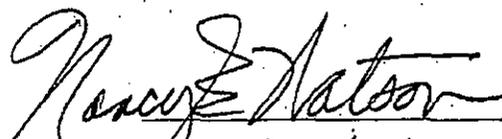
City of Oakiana
and
Western Council of Engineers

to the City's Personnel Manual shall remain in effect unless modified or eliminated by the Civil Service Board.

~~Until the Board of Commissioners adopts such personnel rules and procedures, the rules of the Civil Service Board, insofar as they are consistent with this chapter, shall remain in effect with respect to Port employees.~~

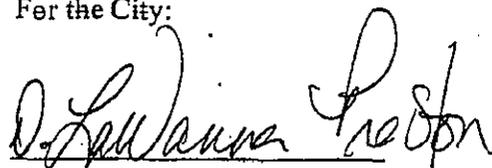
February 8, 2012

For the Union:


Executive Director, WCE

February 8, 2012

For the City:



**City of Oakland
and
Western Council of Engineers**

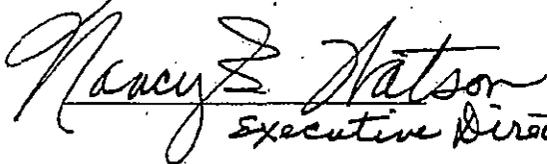
**Tentative Agreement
Retirement
February 8, 2012**

As soon as practicable, the City shall amend its contract with PERS to provide as follows:

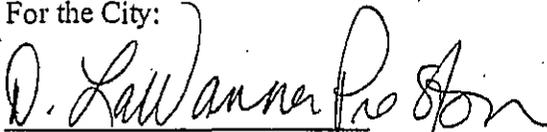
1. Any bargaining unit member whose first day of employment occurs after the City amends its contract with CalPERS the 2.5% at 55 retirement plan.
2. Any bargaining unit member whose first day of employment occurs after the City amends its contract with CalPERS shall be subject to final compensation in accordance with Government Code Section 20037 which means the highest average annual compensation earnable by a member during the three consecutive years of employment immediately preceding the effective date of his or her retirement.

February 8, 2012

For the Union:


Nancy Z. Watson
Executive Director, WCE

For the City:


D. Lawrence Proctor

For the Port
