

# **BINDING ARBITRATION – *Don't Repeal It, but Don't Repeat It***

John Ashbaugh, October 2008

One of the most contentious issues that San Luis Obispo voters have faced over the past decade is binding arbitration for its fire fighters and police.

## BACKGROUND

- November 2000 Election: In the 2000 election, there were several police and firefighter arbitration measures on the ballot at both the city and state levels.
- State Binding Arbitration Approved - On the state level, California's voters approved a proposition adding Sections 1299-1299.9 to the Code of Civil Procedure, which is titled as "Arbitration of Firefighter and Law Enforcement Officer Labor Disputes." This law was challenged in court and found unconstitutional, but the Legislature amended it in 2004. In an opinion written after a request filed by John Ashbaugh, the San Luis Obispo City Attorney acknowledges that this amended law could apply to San Luis Obispo (see below).
- SLO City Binding Arbitration Also Approved - In the same election there were two (2) ballot measures for SLO City voters to decide. The first, Measure S, imposed binding arbitration between the City and the SLO Police Officers' Association ("POA") and the Firefighters' Association ("FA") "**without City Council or voter approval.**" The results were **57.30% Yes** votes and **42.70% No** votes. That is the Charter amendment which is currently in place, and it is the subject of much controversy; in fact, all of the current Council members and most of the six candidates for the two Council seats have called for the repeal of Measure S.
- City-Sponsored Binding Arbitration Measure Rejected - The second ballot measure for City voters in the 2000 election was Measure T, a City-sponsored Charter Amendment which limited binding arbitration to "salary only" (thus excluding benefits, an important item) and required "voter approval of any binding arbitration award that imposes a financial burden greater than the increase in the local cost of living or the City's final offer, whichever is greater..." The results were **38.54% Yes** votes and **61.46% No** votes. This defeated measure has recently been revived (although in a simpler form) in an op-ed in the *San Luis Obispo Tribune* by former City Manager John Dunn and former Councilmember Dodie Williams.

- June 2008 Binding Arbitration Ruling: The first ruling in a binding arbitration case, which was released in June of this year, has produced an award to the city's Police Officers Association that is, in the view of the editorial board of the SLO Tribune (and others), "excessive": Approximately 30% increase in salary to sworn personnel, and a 37% increase for non-sworn personnel. Both figures reflect a six-year span since the expiration of the last contract.

## COMMENTS

- Has the arbitrator's June ruling resulted in an "excessive" award to our police officers? It depends on your perspective. The arbitrator's decision might actually have saved the city money, since it constituted only a 30% increase between the City's final offer and that of the POA. An even "50-50" split between the City and the POA could have cost \$2-3 million more than the arbitrator's ruling.
- My Position: I will not support either the repeal of Measure S or the resurrection of Measure T. The city's voters have spoken, and they approved the FF/POA proposal by a wide margin; they defeated Measure T by an even wider margin. It's doubtful that they have changed their mind. Any campaign to repeal Measure S would be met by strong and well-financed opposition by the POA/FF and their statewide affiliates. As this is written - four months following the first ruling in a binding arbitration case – little or no organized effort has appeared to formulate any realistic ballot measure to repeal or significantly modify Measure "S". Moreover, in response to a question posed by John Ashbaugh, the City Attorney has opined (attached) the City might be subject to statewide binding arbitration law, which is "still on the books," even if Measure "S" were repealed.

## PERSPECTIVE

Binding arbitration is a "last resort," required only when an impasse has been declared between the city and its associations. With good will on the part of both the city and its employee associations, in the future we can avoid repeating another binding arbitration ruling that results in such controversy. Here's how:

- Find Common Ground on Comparable Cities: The Council should seek to narrow the differences between the two parties by proposing a modified process for selecting the cities to which the City's salary and benefits package is compared. Most of the differential between the City and the POA was because of the use of different cities

for comparison purposes: Both the POA and the City agreed on seven cities, but the POA wanted to use Gilroy and Santa Barbara rather than the City's proposal of Chico and Davis. The June, 2008 arbitration ruling accepted the POA argument, which substantially accounts for the 30% increase over the City's final offer. Instead of starting out with each party submitting a separate list of such cities, I propose that we seek agreement in advance on a set of characteristics that such cities should represent. Negotiations should proceed only after agreeing upon geographic, economic, fiscal, demographic, and physical characteristics that would make any city eligible for consideration on the list. For example, we could try to agree on whether to accept cities in the Bay Area, Los Angeles, or the Central Valley as a region. If we can agree on these characteristics, there's a good chance that an impasse could be avoided.

- Make the Arbitration Panel Accountable: Should it still be necessary to resort to binding arbitration in the future, however, I propose that the city seek agreement with its employee unions to use the full panel of three arbitrators as provided in the charter – but further, we should propose that both of the added panel members should be local (i.e., SLO County) people. In the last round of arbitration, both the City and the POA agreed only to use a single arbitrator, anticipating that the use of three panelists would probably make no difference in the final outcome. Perhaps that is true, but if the panel is dominated by local residents, at least the result would not suffer one criticism so often heard: that the ruling emanates from a single person based in some faraway place, without any understanding of local circumstance.

Above all, let's focus on our common goal: A fair schedule of salaries and benefits that allows us to attract and to retain high-quality public safety employees, at a cost that the City can afford. Any attempt to repeal Measure "S" would be highly divisive and destructive to the collaborative relationship we need with our public safety employees – and even if we did succeed in repealing it, the City would still be subject to statewide binding arbitration law. To summarize, my position on binding arbitration is simple: [Don't Repeal It, but Don't Repeat It.](#)

If you would like to comment on this position paper, please send an e-mail to me at [\*jbashbaugh@charter.net\*](mailto:jbashbaugh@charter.net).

**From:** Lowell, Jonathan P  
**Sent:** Monday, October 13, 2008 10:36 AM  
**To:** Hooper, Audrey  
**Subject:** Code of Civil Procedure 1299 et seq.

Audrey,

In reply to Mr. Ashbaugh's question, if our binding arbitration provision were repealed, would the City of San Luis Obispo be subject to the state law binding arbitration provision?, I offer the following:

It seems that after the California Supreme Court ruled unconstitutional SB 402, the bill that imposed binding arbitration on general law cities, a new law was adopted and is now codified at Code of Civil Procedure section 1299 et seq. That law imposes binding arbitration on general law and charter cities, except for charter cities with binding arbitration provisions adopted prior to 2004, unless such charter provisions are later amended or repealed. The newer law differs from SB 402 in that it allows for the city to overrule the arbitration award provided there is a unanimous council vote to do so.

Code of Civil Procedure section 1299 et seq. is still on the books, but there have been successful challenges to the law at the trial court level in different parts of the state, and the one appellate court action we are aware of was settled prior to adjudication, thus suggesting that the constitutionality of this law is very questionable. It is likely that if our Charter provision on binding arbitration is repealed or modified, by the time there is such a change in the Charter, there will already be an appellate court decision on the validity of Code of Civil Procedure section 1299 et seq. to guide us. In addition, if our local binding arbitration provision is repealed in its entirety and the statewide binding arbitration law is still on the books without an appellate court decision about it, the issue of whether or not the City is subject to it would not actually be raised until an impasse were reached between the parties in labor negotiations, thereby allowing more time for other cities to grapple with this issue and perhaps obtain a decision from an appellate court. But, it is foreseeable that were San Luis Obispo citizens to modify the Charter to include a provision whereby an arbitration award must first be approved by the voters prior to implementation, then some sort of legal challenge could be brought earlier.

I trust you will convey this information to Mr. Ashbaugh and the other candidates for office. Thanks.

Jonathan

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