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Agenda Item: 10:45 A.M. HEARING

Date: 6/26/14

CITY CLERK, FRESNO, CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Items – 10:45 A.M. - A
Supplemental Packet Date: June 25, 2014

Item(s)

HEARING regarding a bargaining impasse and unilateral implementation of wages, hours and other terms and conditions of employment for employees in Unit 5, represented by the International Association of Fire Fighters, Local 753 (Fire Basic) – Personnel Department

RESOLUTION - To implement changes in wages, hours and other terms and conditions of employment for City employees in Unit 5, represented by the International Association of Fire Fighters (IAFF), Local 753 (Fire Basic)

RESOLUTION – 7th amendment to Salary Resolution No. 2013-101, modifying salaries in Exhibit 5, Fire Non-Management (IAFF)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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DOUGLAS T. SLOAN
City Attorney

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CITY CLERK, FRESNO CA

June 25, 2014

MEMORANDUM

RE: Informational Statement Regarding Imposition of Pre-Impasse Proposed Upon Fresno City Firefighter Association – Non-Management Fire (Fire Basic)

INTRODUCTION

This memorandum addresses the facts and legal issues of City of Fresno's ("City") consideration of the imposition of terms and conditions of employment with its Non-Management Fire Unit ("Unit 5") represented by the Fresno City Firefighters Association ("Association").

FACTS

The City and Association are parties to a Memorandum of Understanding ("MOU") which expired on August 4, 2013. After negotiating in good faith, the parties reached overall tentative agreement ("1st TA") for a successor MOU on November 5, 2013. Following a change in Association leadership, the Association declined to take the terms of the 1st TA to its membership for a vote. After subsequent negotiation, the parties reached a second TA ("2nd TA") on January 6, 2014. On January 28, 2014, the Association informed the City that Unit 5 membership failed to ratify that 2nd TA.

After returning to the table after the failed ratification vote on the 2nd TA, the parties were unable to make further progress. The City declared impasse on March 17, 2014, confirming its declaration in writing on March 20, 2014. The City's final offer was identical to the terms of the 2nd TA, which the Association's membership failed to ratify.

On April 22, 2014, the parties conducted an impasse meeting pursuant to Fresno Municipal Code ("FMC") section 3-617. The parties discussed their positions on the disputed issues. During those April 22nd discussions, the Association made a new verbal proposal. The City team informed the Association that it did not have authority to agree to the proposal being made. The City agreed, however, that it would submit the proposed package to the City Council if, and only if, the Unit 5 membership first ratified it. Thus, the impasse meeting concluded with the parties' agreement on a process going forward to potentially resolve the dispute. Subsequently, the parties agreed on proposed MOU language to be submitted to the Association's membership for a vote on the Association-sponsored proposal. That vote occurred on June 3 and June 5, 2014. The proposal was rejected by a vote of 73 to 50.

Not Attorney-Client Privileged

More recently, the City gave the Association a final opportunity to break the impasse by having its membership vote again on the failed Association-sponsored proposal. The Association indicated intent to do so, but on June 23, 2014, informed the City that it had decided not to seek ratification.

On June 24, 2014, counsel to the Association delivered a letter to the City asserting the April 22, 2014, meeting represented "continued . . . exchanges of position by both parties." The Association demanded the City complete "those steps contemplated as part of the impasse meeting pursuant to FMC section 3-617" before implementation.

Neither party asked to mediate the dispute. The Association did not request fact-finding by April 19, 2014, the last day before expiration of the statutorily defined time period for requesting factfinding. (Gov. Code §3505.4(a).)

LEGAL DISCUSSION

The Meyers-Milias-Brown Act ("MMBA," Gov. Code §§ 3500 *et seq.*) requires local agencies and recognized employee organizations to meet and confer in good faith with over issues within the scope of representation. (Gov. Code § 3505.) Once impasse occurs and after exhaustion of any applicable impasse procedures, the City may unilaterally implement "policies reasonably comprehended within previous offers made and negotiated between the parties." (*PERB v. Modesto City Schools District* (1982) 136 Cal. App. 3d 881.)

Impasse Procedures

An impasse procedure is set forth in Section 3-617 of the FMC, consisting of a mandatory impasse meeting, mediation upon mutual agreement, and potential post-mediation fact-finding. In accordance with that section, the parties held an impasse meeting on April 22, 2014. During that meeting, the Association made a proposal that it agreed to take back to its membership; the City agreed to recommend the proposal to the City Council if it was ratified by the Association membership. After the membership vote failed, neither party sought voluntary mediation. This concluded the parties' obligations under the FMC impasse procedure.

Government Code section 3505.4(a) authorizes an employee organization that has not elected to mediate an impasse to request fact-finding. Such a request must be filed "not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse." This same timeline is also codified as PERB Regulation 32802.

The 30 day time limit for seeking fact-finding under the Government Code applies to all local agencies except for agencies that have adopted binding arbitration as a means for resolving bargaining disputes. (Gov. Code, § 3505.5(e).) The FMC does not provide for binding arbitration. For this reason, the Government Code's 30 day time limit for demanding fact-finding applies to FMC section 3-617.

The City issued its written notice of impasse to the Association on March 20, 2014. As noted above, the Association did not make any request for fact-finding by the deadline of April 19, 2014. PERB has strictly construed the statutory timelines for requesting fact-finding under Government Code section 3505.4, recently stating that employee organizations have “the sole responsibility” for requesting fact-finding in a timely manner. (*City of Redondo Beach* (2014) PERB Order No. Ad-409-M; see also *City of Redondo Beach* (2014) PERB Order No. Ad-413-M.) As such, the Association did not comply with the statutory deadlines for a fact-finding request and cannot do so now.

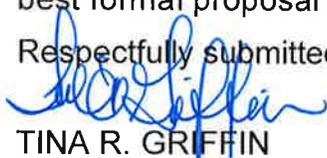
Unilateral Implementation

Government Code section 3507 provides after any applicable impasse procedures are exhausted, “a public agency ... may, after holding a public hearing regarding the impasse, implement it last, best, and final offer but shall not implement a memorandum of understanding.” If an impasse is broken and bargaining is subsequently resumed but again deadlocks, unilateral implementation is appropriate, because impasse procedures may not be re-invoked for second or subsequent impasses. (See, e.g., *Modesto City Schools* (1983), *above*.)

After the impasse process was exhausted, the City gave the Association notice, both in writing and during a meeting between City and Association representatives, the last best and final offer would be implemented unilaterally on June 26, 2014. The City also gave the Association the opportunity to seek ratification of the Association-sponsored proposal anew, in order to avoid unilateral implementation. While the Association initially indicated a desire to pursue this course, the Association’s representative informed the City Manager on June 23, 2014, that the Association was “pulling” the ratification vote. This signaled the end of any post-impasse, pre-implementation process.

The Association has asked the City to continue negotiations and claims that the impasse process was not completed. The City has determined, however, that further negotiations would be futile, and the law does not require re-invocation of the impasse process under these circumstances. Accordingly, at its June 26, 2016 meeting, the City Council may consider implementing the terms of the City’s last pre-impasse proposal as set forth in the March 20, 2014, impasse letter, after conducting a public meeting and a Council vote to impose its last best offer. The impasse letter represents the last, best formal proposal made by the City in negotiations.

Respectfully submitted,



TINA R. GRIFFIN
Supervising Deputy City Attorney

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