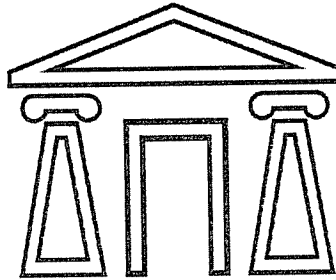


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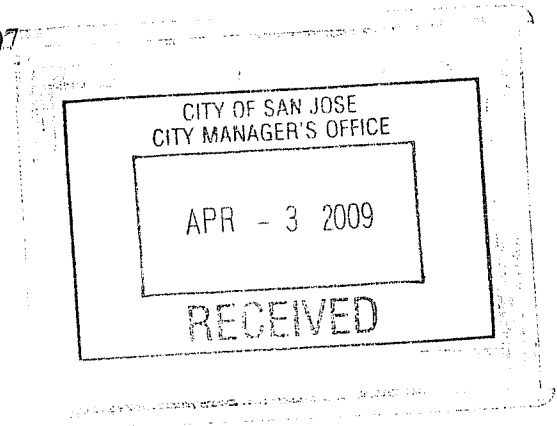
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March 28, 2007

Via Facsimile & U.S. Mail

Ed Rast, Chairperson
Sunshine Reform Task Force
San José City Hall
200 East Santa Clara
San José, California 95113



**Re: Response by Operating Engineers Local Union No. 3 to
Sunshine Reform Task Force Proposals on Labor Negotiations**

Dear Mr. Rast:

I represent Operating Engineers Local Union No. 3 Public Employees Division, which represents over 750 employees of the City of San José. On behalf of the public employees we represent, I am providing you with our response to the labor negotiations reforms proposed by the Sunshine Reform Task Force.

We understand the Sunshine Reform Task Force has recommended subjecting public employee contract negotiations to "public input" outside of the collective bargaining process by (1) allowing "a meaningful opportunity for the public to participate" in labor negotiations; and (2) providing for the City Council to approve "[a]ll proposed contracts with represented and unrepresented employees" in open session. Operating Engineers adamantly objects to these proposals because they will interfere with the collective bargaining process mandated by the Meyers-Milias-Brown Act and will compromise the interests of our represented members.

The Meyers-Milias-Brown Act ("MMBA") (Gov. Code §§ 3500 et seq.) is the exclusive method by which "disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations" are to be resolved and collective

Ed Rast, Chairperson
Sunshine Reform Task Force
March 28, 2007
Page 2

bargaining agreements are to be negotiated in California. (Gov. Code § 3500(a); *San Bernardino Public Employees Association v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1220.) Under the MMBA, public agencies must negotiate exclusively with the recognized bargaining units. (Gov. Code § 3505.) “Once an MOU has been negotiated, it is reviewed and approved by the governing body of the public entity and the membership of the bargaining unit. (*San Bernardino Public Employees Association* at p. 1220, emphasis added.)

The parties to any contract negotiation under the MMBA are the public entity governing body – here, the San José City Council – and the membership of the recognized bargaining unit; here, Operating Engineers. (Gov. Code § 3505.1.) This provision “reflect[s] the legislative decision that the ultimate determinations are to be made by the governing body itself or its statutory representative and not by others.” (*Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 25.) There is no place in this process for “public input” or “public involvement.” The public simply is not a party to the memorandum of understanding between the public employer and a recognized bargaining unit and has no statutory role in contract negotiations under the MMBA.

Moreover, the Legislature already has determined the public interest is best served by imposition of a uniform statewide collective bargaining process, not by a public role in the process itself. (See Gov. Code § 3500(a); *Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 811-812.) The statute does not provide for public input on or approval of the parties’ proposals in the collective bargaining process.¹ The local governing body must have the unfettered authority to bargain on its own behalf through its designated representatives without outside interference. (Gov. Code §§ 3505, 3505.1.) A process whereby the “public” must review proposals and tentative agreements before the City Council could commit to them directly contradicts these principles and would violate the statute.

Violations of the MMBA – such as by subjecting the collective bargaining process to public involvement – may be prosecuted as unfair labor practices through the Public Employment Relations Board. It is an unfair labor practice to fail to bargain in good faith; to attempt to interfere with union rights; or otherwise to violate the MMBA. Any attempt to subject union proposals or memoranda of understanding to public involvement will leave Operating Engineers no choice but to charge the City with unfair labor practices.

Our opposition to the labor negotiations reforms proposed by the Task Force does not mean the union seeks to conceal the collective bargaining process from public scrutiny. However, the

¹ The Educational Employment Relations Act does contain a public disclosure provision; however, no similar statute is found in the MMBA. (See Gov. Code § 3547(a) [“[a]ll initial proposals of exclusive representatives and of public school employers, . . . shall be presented at a public meeting”].)

Ed Rast, Chairperson
Sunshine Reform Task Force
March 28, 2007
Page 3

proposals contravene the intent of the statewide collective bargaining statute and would unduly disrupt the process by subjecting both employer and employee organization proposals, tentative agreements, and the ultimate agreement to public control. Operating Engineers will not accept this attack on the interests of its members in an orderly, lawful collective bargaining process.

Operating Engineers Local Union No. 3 welcomes the opportunity to discuss the Sunshine Reform Task Force proposals in further detail at the next scheduled meeting of the Task Force or in any other forum the Task Force may arrange. Please contact me or Don Dietrich, Director, Public Employee Division, Operating Engineers Local Union No. 3, to discuss these matters.

Yours Truly,

**MASTAGNI, HOLSTEDT, AMICK,
MILLER, JOHNSEN & UHRHAMMER**



CHRISTOPHER W. MILLER
Attorney at Law

/cwm

cc: Don Dietrich, OE-3
Bill Pope, OE-3