

Operating Engineers, Local 3

Proposal # 20

ARTICLE 20 AGENCY FEE—Maintenance of Membership

The Union will maintain records of employee authorizations for dues deductions. The Union will provide the City with information regarding the amount of dues deductions and certify the list of Union employees who have authorized dues deductions. The City will rely on the information provided by the Union in processing dues deductions for Union members and remit such dues or fees to OE#3. The Union will immediately notify the Agency of any changes in member dues deduction authorizations. The Employer will direct all inquiries from employees about union membership or dues deduction to the Union.

~~20.1 Employee Rights.~~

~~20.1.1 The City and the Organization recognize the right of employees to form, join, and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.~~

~~20.1.2 Accordingly, membership in the Organization shall not be compulsory. An employee has the right to choose, either, to become a member of the Organization; or, to pay to the Organization a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 20.6 below.~~

~~20.2 Employee's Obligation to Exclusive Representation.~~

~~20.2.1 An employee who is a member of the organization on January 12, 1986, and any employee who becomes a member after January 12, 1986, shall maintain such membership, except as provided during the change of status period set forth in Section 20.2.3 below.~~

~~20.2.2 Any person who becomes an employee on or after January 12, 1986, must, within 30 days after their employment, submit to the City either:~~

~~20.2.2.1 A signed authorization to deduct dues as a member of the organization; or,~~

~~20.2.2.2 Voluntarily sign and deliver to the City a written assignment authorizing deduction of the properly established agency fee as defined in Section 20.3 below, subject to the conditions set forth elsewhere in the Memorandum for payroll deductions. Upon voluntary authorization duly completed and executed, the City will deduct from the pay of an employee and pay to the organization the normal and regular monthly Agency fee; or,~~

~~20.2.2.3 A signed affidavit that the employee qualifies for an exemption as set forth in Section 20.6.1 below. In this case the employee must designate a charity from Section 20.6.2 to which the appropriate amount will be paid through payroll deduction.~~

~~20.2.2.4 If a person fails to make any of the designations set forth above within the 30 day period, they will be given notice by the City that the Agency fee deduction will be made beginning with the first full pay period following the expiration of the 30 day period. The City and the organization agree that the~~

agency shop fee shall be paid in exchange for representation services necessarily performed by the organization in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the organization.

~~20.2.3 During the periods of September 1, 2018, through September 30, 2018, any employee who is a member of the organization may, by written notice to the Municipal Employee Relations Officer or designee, resign such membership and change their status to the agency fee or exempt category in accordance with the provisions of this article.~~

~~20.2.4 Upon the return from leave of absence of any employee or upon the recalling of an employee from layoff status on or after January 12, 1986, the employee's options under this article will be determined by their original date of hire.~~

~~20.2.5 The parties expressly agree that the authority granted the Employee Relations Officer or designee, in Article 10, Full Faith and Credit, to cancel payroll deductions in the event of a concerted activity extends to the cancellation of agency fee and dues deductions.~~

~~20.2.6 The organization specifically agrees that the provisions of Section 20.7 of this article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of agency fee.~~

~~20.3 Definition of Agency Fee.~~

~~20.3.1 The agency fee collected from non-member bargaining unit employees pursuant to Section 20.2 of this Memorandum shall be limited to the Organization's (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Organization as the agency fee.~~

~~20.3.2 The Organization certifies that this "representation fee" includes only those costs actually incurred by the Organization in representing employees, who are not also members of the Organization, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: Organization fines, back dues, initiation fees, or any other charge required as a condition of Organization membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities; any and all amounts which do not constitute costs actually incurred by the Organization in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Organization specifically agrees that the provisions of Section 20.7 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.~~

~~20.4 Exceptions. The provisions of this Article shall not apply to non-benefited part-time employees.~~

~~20.5 Annual Verification of Agency Fee by Organization. The Organization shall submit to the City a detailed written financial report of its financial transactions in the form of a balance sheet and an operating statement, certified as to accuracy by the Organization's Executive Secretary. Each year such~~

reports shall be verified and submitted in writing to the Office of Employee Relations by the Organization within 60 days of July 1st.

~~20.6 Employees Exempted From Obligation to Pay Organization.~~

~~20.6.1 Any employee shall be exempted from the requirements of Section 20.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.~~

~~20.6.2 Such exempt employee shall, as an alternative to payment of an agency fee to the Organization, pay an amount equivalent to such agency fee to either:~~

~~a) The United Way; b) Combined Health Agencies Drive (C.H.A.D.); c) Any charity jointly agreed upon by the City and the Organization. Such charities cannot be affiliated in any manner with the Organization, nor can such charity be related to an established religious organization.~~

~~20.7 Hold Harmless. The Organization shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to agency fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.~~

~~20.8 Expiration Date of Agency Fee Provisions. It is agreed and understood by the parties to this Memorandum that the provisions, rights and obligations herein pertaining to payment of any agency fee and dues deduction shall not survive beyond the term of this Memorandum, and shall accordingly expire on September 30, 2018 provided however that, pursuant to Government Code Section 3502.5, this Article 20 may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Memorandum of Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least thirty (30) percent of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.~~