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October 14, 2011

VIA E-MAIL

Chris Platten
Wylie, McBride, Platten and Renner
2125 Canoas Garden Ave., Suite 120
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John Tennant
San Jose Police Officers Association
1151 N 4th St.
San Jose, CA 95112

Gregg Adam
Carrol, Burdick & McDonough LLP
44 Montgomery St., Suite 400
San Francisco, CA 94104

Re: Retirement Reform Negotiations

Dear Chris, John and Gregg:

I write to memorialize the City's concern, expressed at the bargaining table, regarding bargaining unit members engaged in direct dealing with City Council members. As you know, an exclusive representative has a duty to meet and negotiate in good faith with the City's chosen negotiators. It is a violation of that duty for an exclusive representative to attempt to bypass the employer's chosen representatives and negotiate directly with the City's principals, in this case, the City Council. (See California State University (1987) PERB Dec. No. 621-H (union president's mailgram to Board of Trustees containing proposals not made in bargaining violated duty to meet and confer), *vacated pursuant to parties' settlement agreement*, California State University (1987) PERB Dec. No. 621a-H.) While we recognize the Unions' right to engage in "advocacy support," that speech must not undermine the bargaining process. (Westminster Unified School District (1982) PERB Dec. No. 277 (explanation of proposals does not violate the act); see Muroc Unified School District (1978) PERB Dec. No. 0080E (touchstone for determining propriety of direct communications is effect on authority of the bargaining representative).)





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In this case, you have indicated that representatives of the unions you represent met with individual City Council members to “preview” proposals you had not yet made at the bargaining table. While you asserted at our meeting on October 12, 2011, that union representatives did not “show” the written proposal to Council members, you conceded that elements of the forthcoming proposal were discussed, and that the unions’ actuary attended some of meetings. We can only assume the purpose of the actuary was to explain either the benefits of the unions’ forthcoming proposal or to attack the City’s proposals. These actions go beyond “advocacy support” and amount to direct dealing.

These actions also violate the labor negotiations limitations adopted by the City Council in Council Policy 0-39, a copy of which is enclosed.

As we discussed in our most recent session, the place for negotiations is at the bargaining table. Direct dealing undercuts the negotiation process, resulting in little progress or even discussion occurring at the bargaining table itself. Such conduct also reduces the likelihood of a compromise agreement being reached. Equally important, direct dealing also seems to leave your clients with incorrect impressions of the City’s positions – gleaned from conversations with Council members where all the facts are not necessarily provided, and where the Council itself has not deliberated on the proposals presented. This self-inflicted confusion is counter-productive.

The City remains committed to working with the IAFF and the POA to reach a mutually agreeable solution to the current situation – and we are committed to doing so *at the bargaining table*. While we cannot stop you or your clients from meeting with Council members, we ask that you immediately cease and desist from activities that undermine the bargaining process, including discussion of proposals – both potential and actual – with Council members prior to presenting them at the bargaining table.

Sincerely,

Jonathan V. Holtzman

JVH/je

cc: Alex Gurza, Deputy City Manager
Rick Doyle, City Attorney

Enclosure



City of San José, California

COUNCIL POLICY

TITLE Council Labor Negotiation and Transparency Guidelines	PAGE 1 of 3	POLICY NUMBER 0-39
EFFECTIVE DATE March 4, 2008	REVISED DATE January 25, 2011	
APPROVED BY COUNCIL ACTION No. 75705	3/4/2008, Item 3.6, Res. No. 74265; 1/25/11, Item 3.2, Res.	

BACKGROUND

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San José Employer-Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate labor contracts on behalf of the City to the City Manager or the City Manager's designee.

Pursuant to the Meyers-Milias-Brown Act, the City has a right to insist that contract negotiations take place at the bargaining table between the designated representatives of the City and the designated representatives of the various bargaining unit employees. Members of the City Council shall not negotiate with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith and not to bypass the negotiation teams.

As used in this policy, "negotiate" means to meet and confer with another to endeavor to reach agreement on matters within the scope of representation.

Unless agreed to by the City and the bargaining unit, negotiation sessions are confidential, but there is great public interest in having information about the negotiations available for public review.

PURPOSE

This policy applies only to the Mayor, members of the City Council, Mayor and Council staff, and Council Appointees.

References in this policy to members of the City Council or Council staff include the Mayor and Mayor's staff.

The purpose of this policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith, to avoid actions that would circumvent the City's designated bargaining team, and to provide timely and accurate information about the negotiations to the City Council and the public.

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POLICY

It is the policy of the City Council that all of its members and staff and Council Appointees shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San Jose Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. Members of the City Council or Council staff or other Council Appointees shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. In order to avoid misunderstandings and potential unfair labor practices, unless requested by the City Manager, members of the City Council or Council staff or other Council Appointees should not discuss with any bargaining unit representative or persons acting on their behalf any matter that is a subject of the negotiations while the City and the bargaining units are engaged in the negotiation process. The negotiating process shall be defined as the time period starting with the first negotiation session until a resolution has been achieved. This provision does not apply when the City Attorney is handling litigation on matters that are subject to negotiations, interest arbitration, or when the City Attorney is contacted by a bargaining unit's designated legal counsel to discuss legal issues. The City Attorney shall notify the City Manager of any such communications to ensure coordination with the legal issues and Council direction to the City Manager for labor negotiations.
5. Nothing in this policy shall prohibit members of the City Council, Council staff or Council Appointees from listening to bargaining unit representatives or persons acting on their behalf. Members of the City Council shall not knowingly respond to or discuss any proposals or any other confidential closed session discussion.
6. Nothing in this policy shall preclude the City Manager from requesting the assistance of the City Attorney or other Council Appointees in carrying out the responsibilities as the Municipal Employee Relations Officer.
7. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council material facts regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).
8. Authorization and direction to the City Manager is provided in closed or open session. If done in closed session, in order to maintain the integrity of the negotiation process, closed session discussions must remain confidential.
9. Written proposals made or received shall be posted for public review on the City's web site after the proposals have been submitted to the designated negotiators.

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10. The City Manager will provide periodic updates on labor negotiations to the City Council in open session except for elements that are required to be held confidential. These updates shall include a summary of proposals exchanged since the last update.
11. Bargaining unit representatives or persons acting on their behalf may comment on the City Manager's open session labor negotiations update. This shall be done during open session to ensure all of the Council receives the same information. The City Council may listen to these statements made in the public forum and may ask questions for clarification purposes, but shall not respond to the comments, or engage in dialogue or any other form of bargaining with the representatives.
12. Nothing in this policy shall limit, restrict, or modify any of the powers provided to Council Appointees under the City Charter.