



June 18, 2021

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Sent Via Email

Jennifer Schembri
Director of Human Resources
Director of City Manager's Office of Employee Relations
200 E. Santa Clara Street
San José, CA 95113-1905

Re: *Last, Best & Final Offer from IFPTE Local 21 and AFSCME Local 101*

Ms. Schembri,

Thank you for meeting with the coalition again today to attempt to reach an agreement on successor *Memoranda of Understanding* for the various bargaining units. As you know, since our initial meeting in April, we have met as a coalition on six separate occasions in addition to separate meetings with individual bargaining units. The City and the Unions have also had multiple conversations in other venues in an attempt to find common ground. IFPTE and AFSCME have each issued at least twelve (12) comprehensive proposals to the City.

The direction from the more than four thousand members we collectively represent is clear - we have no additional movement to make with respect to any further counter proposals and so the following package proposals represent the *Last, Best & Final* offers from our respective Unions.

In reviewing the [City's latest proposal and its cover letter](#) we have several points of clarification pertaining to it.

First, as we pointed out today, your costing of union proposals is inconsistent at best. The City uses different numbers to support its own position depending on the issue in question. One example is overstating the costs to the unfunded liability of the pension plan knowing full well that federated employees have received less than 3% average increase going back at least a decade and more. Furthermore, the City relies on mathematical assumptions that include a fully staffed City when in fact the city routinely and currently has near seven hundred (700) vacancies. The City also counts funds supplied from the *American Rescue Plan* and not the City General Fund in the costing of its total package for our Unions yet compares us to another City bargaining unit (Police) total

compensation costs which don't include those same federal funds. Undoubtedly a State appointed factfinder or an independent actuarial analysis of the numbers in question would reach the same conclusions as the Unions. Which is to say, many of the increases proposed by the Unions will not cost as much as the City claims they will – even using the more inflated City numbers and not the actuals.

Second, the City's letter also referenced comparator agencies and (despite an incredibly low sample size and one clear outlier) made the argument that a 3% wage increase was above the average for neighboring agencies. This comparison is patently absurd. For years, the City has refused Union attempts to compare to other agencies when discussing wage increases. Yet now, in a breath-taking reversal of its own typical position, the City is bringing up comparator agencies as something the unions should consider by claiming *"It was important for us to determine whether the wage increases we are offering are out of line with other agencies"*. The City completely disregards that those other cities' employees enjoy compensation packages that are far superior to those earned by San Jose workers. The Unions will only consider a small sampling of 2021 wage increases from other agencies a valid point of comparison when the City of San Jose regularly uses these agencies' wages, benefits, retirement, differentials, certification pay, vacations, and working conditions in revising total compensation of City classifications. Numerous requests to use these agencies as compensation comparators have been shrugged off by the City over the past decade. Comparing percentages in this way now is a gross misrepresentation of the regional compensation picture.

Finally, on Monday, Union members occupied over three hours of public comment at the City Council meeting expressing their frustrations with the City. They did so out of outrage and exhaustion because services they provide to the community are continually cut by this City who every year asks of them to do more with less. In its letter, the City used a misstatement by a couple of these overworked public servants to claim *"the City has heard and appreciates the recent concerns raised by various employees represented by IFPTE and MEF related to the importance of receiving a pensionable general wage increase that is equivalent to 3.0%"*. Among all the offensive arguments made in the letter from the City, this may be the most outrageous. The City's attempt to gaslight 4,000 people in this way is reprehensible. The Unions have been clear from the beginning of our conversations that what was most important was investing in public services at the same level that the City invests in police.

The remaining issues on the table are no longer just about the monetary value they represent for our 4,000 members. It's about respect now. It's about fairness and dignity.

The lack of respect that the City is showing these workers by agreeing to far more lucrative agreements for other City workers year after year has reached its boiling point. For the last year and a half, we have listened to and watched City officials step up to the camera time and time again and tout front line workers as heroes and those who put their lives on the line to keep this city working. The same is true of all the messages of praise delivered internally by City officials to directly to staff which come of as nothing more than lip service.

The hard-working people of this city have for too long heard the city say one thing and do another. The good faith of the working people of this city has run dry. The city has tapped it out. It simply cannot be understated how frustrated, angry, sad, and beat down so many of our Union members

feel towards the City. We sincerely hope the city will agree to these most reasonable terms so we can get back to the work of serving our residents who need our services now more than ever.

Sincerely,

John Tucker – AFSCME Local 101

Matt Mason – IFPTE Local 21

C:

Dave Sykes – City Manager

Jennifer McGuire – Assistant City Manager

San Jose Mayor and City Council

All IFPTE Local 21 and AFSCME Local 101 Members

Encl: Copy of Last, Best & Final offers

Last, Best and Final Offer
International Federation of Professional and Technical Engineers

(IFPTE) Local 21- AFL-CIO

to

The City of San Jose

Union Counter Proposal #1 Wages:

- Fiscal Year 2021-2022

3.5% general wage increase effective the first full pay period in Fiscal Year 2021-2022 following union ratification and Council approval in open session. Effective the first full pay period in Fiscal Year 2021-2022 following union ratification and Council approval in open session, all salary ranges for employees holding positions in classifications assigned to CAMP, AEA and AMSP shall be increased by approximately 3.5%.

- Fiscal Year 2022-2023

3.5% general wage increase effective the first full pay period of Fiscal Year 2022-2023. Effective the first full pay period of Fiscal Year 2022-2023, all salary ranges for employees holding positions in classifications assigned to CAMP, AEA and AMSP shall be increased by approximately 3.5%.

Union Counter Proposal/Response #2 (CAMP, AMSP and AEA)

8.2.2.2.1 Vacation Sell Back

Union Drops Proposal

ARTICLE 11.9 MANAGEMENT PERFORMANCE PROGRAM

PURPOSE The Management Performance Program (MPP) is intended to: (1) increase the accountability of City Management employees by ensuring that their job performance is evaluated at least annually, and (2) reinforce and recognize job performance results that exceed pre-established targets and expectations.

AUTHORITY San Jose Council Resolution #51870 (October 10, 2001) establishes the manner in which management employees are compensated within their respective salary ranges, based on annual evaluations of job performance, and describes the basic rules for the administration of the MPP. San Jose Municipal Code, Section 3.04.1700 states that the Director of Human Resources, in cooperation with the Appointing Authority, shall establish and maintain a method of rating the performance of employees in the classified service and that ratings shall be done not less than annually.

POLICY 1. Annual Evaluations. The job performance of each management employee shall be evaluated at least annually and this evaluation shall be used to determine the employee's rate of compensation within the salary range established for his/her job class.

2. Scope of Coverage. The positions defined as management (Unit 99—Executive Management and employees represented by AEA, AMSP, CAMP), except for employees in Temporary Unclassified positions and Council Appointees. Also, certain provisions of the MPP do not apply to management employees in the offices of the City Attorney or City Auditor, and these are specified in Section 4A of Council Resolution #51870.

3. Appraisal Periods. The appraisal period for a management employee generally begins the first day of appointment to the management position and ends upon completion of the employee's probationary period. (Please note that unclassified and temporary employees do not serve a probationary period since they are "at-will" employees. "At-will" employees should be

evaluated after completing six months of full time service and annually thereafter consistent with other MPP employees.) After an employee completes probation, or has completed six months of service, the appraisal period corresponds to the City's fiscal year, July 1 through June 30. In the case where an employee has been supervised by more than one supervisor during the MPP timeline, the prior supervisor and current supervisor time should be used together to evaluate the employee. An exception to this is a special appraisal, which may be given at any time to communicate marginal or unsatisfactory performance. A special appraisal covers the period from the time of the last review to the designated special appraisal date. An employee shall be provided notice that they are going to receive a special appraisal, ideally when they receive an appraisal that warrants a special appraisal.

4. Switch from Initial Review to Annual Schedule. Since management employees' appraisal dates convert after completing probation (or for "at-will" employees after six months), to a common annual date in July, there will usually be one appraisal cycle for each individual where the appraisal period will be more, or less than twelve (12) months. Employees whose initial review occurs in January through June, and who receive a salary increase at the end of this period, shall not be eligible for an additional salary increase until the following appraisal year. Consequently, because of the conversion, they will have an appraisal period of thirteen (13) to eighteen (18) months. Employees whose initial review occurs sometime in the first half of the appraisal year—July through December will be included in the next annual appraisal (the following July). Therefore, because of the conversion, they will have an appraisal period of six (6) to eleven (11) months.

5. Rating Criteria and MPP Form.

There are 5 "Key Elements" for the MPP employees. The MPP form should be used to document the appraisal results, with supplemental narrative and information attached. Employees should be made aware of performance issues throughout the rating period and not just upon receipt of an appraisal. Relevant conversations or counselings should be cited in the appraisal.

The "Accomplishments" portion of the form should be used to describe specific goals and objectives that were established at the beginning of the appraisal period. These should directly relate to the Key Elements and the resulting performance ratings for each. The "Achievement Plan" should document specific goals for the next appraisal period. It should be developed jointly by the manager and the MPP employee. The Achievement Plan should be described in terms of anticipated results. This is an opportunity to focus incorporating the corporate priorities (or the portions that apply) into the organization's way of doing business.

6. Management Pay Structure. MPP job classes represented by AMSP, CAMP, AEA and classes in Executive Management—Unit 99 are in open ranges and do not have steps.

7. Annual Appraisal Salary Changes. There are no automatic step increases in the MPP. For MPP classifications, the annual performance appraisal may include recommendations for merit increases up to the top of their salary ranges. During fiscal year 2021-22 and 2022-23, the City Manager will provide the following guidelines for the types of salary changes that are typically appropriate for annual appraisal salary changes, corresponding to the overall performance rating. For the MPP salary range movement will be the following: 3% for “outstanding”, 2.5% for “commendable” and 1% for “satisfactory”. A supervisor can recommend a merit increase beyond the “outstanding” percentage, if exceptional performance is demonstrated, upon the approval of the Department Director and City Manager. Movement within the range is based on the overall performance appraisal rating. Salary changes recommended through the annual appraisal process are effective at the beginning of the first pay period of the fiscal year, which typically falls around July 1.

8. Additional Executive Leave. All participants in the annual appraisal process, and those probationary employees who served in an MPP job in a different class for the appraisal year, may be eligible for additional executive leave. Additional executive leave may be considered when the employee has received a particular rating. During the Fall of each year, the City Manager will provide guidelines for the additional executive leave, corresponding to the overall performance rating. The following rules apply for additional executive leave: From one to five days may be awarded. For employees in Units 99 (Executive Management), CAMP, and AEA, this is in addition to the currently authorized five (5) days, for a maximum possible of ten (10) days. For employees in AMSP, five (5) days is the maximum possible. Employees who receive additional executive leave may also receive performance pay increases, if warranted. Executive leave is tracked (through PeopleSoft) on a calendar year basis, so additional executive leave approved through the annual performance appraisal process in July, will not be credited and available to use until the next calendar year, beginning in January.

9. Follow-up Performance Appraisal.

A management employee who receives an overall rating of “Improvement Needed” as a result of a performance appraisal should be given a follow-up performance appraisal 120 days after the initial evaluation. **The supervisor and employee should have a documented discussion about what is necessary to improve the rating.** The purpose of the follow-up appraisal is to encourage performance improvement and assess the level of improvement that occurred in the intervening time period.

10. Evaluation Appeals. If a management employee with permanent status (not provisional or probationary) receives an overall rating of “Improvement Needed,” the employee may appeal the decision by first, requesting in writing, a hearing with the department head, within ten (10) calendar days after receiving the evaluation. The Department Director will conduct the hearing with the employee within twenty (20) calendar days after receiving the request to hear the employee’s concerns. The Department Director will render a **written** decision on the appeal within five calendar days of the hearing,. If the decision of the Department Director is not satisfactory to the employee, he or she may file a further appeal in writing to the appropriate Appointing Authority, within ten (10) calendar days after receiving notification from the Department Director. This appeal request should include a statement describing the reasons for the appeal. The Appointing Authority shall review the statement from the employee, make a final decision and inform the employee within thirty (30) days from receipt of the appeal, **submitted in writing, to the employee.**

PROCEDURES

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|----------------------------|--|
| Supervisors | 1. Discuss performance rating criteria and process with management employee at the beginning of the appraisal period. |
| Supervisors | 2. Complete performance appraisal at the end of probation period and submit to Human Resources. |
| Human Resources | 3. Provide Department Director with information and timelines for the annual appraisal process. |
| Department Director | 4. Communicate instructions to supervisors on the annual appraisal process and timelines. |
| Supervisors | 5. Prepare performance appraisals and submit recommended awards to Department Director. |
| Department Director | 6. Determine the performance pay and executive leave recommendations for the department and submit recommendations to the Director of Human Resources. |

Supervisors 7. Conduct performance appraisal discussions and communicate any pay or executive leave changes to the management employees. Discuss Achievement Plans for the next appraisal period.

Human Resources 8. Review recommendations for compliance with City Manager guidelines.

Department Director 9. Send the MPP performance reports and the record of approved pay and executive leave changes to the Human Resources Department.

Human Resources 10. Ensure implementation of all changes through Payroll changes and documentation in employee personnel files.

Coalition Union Counter Proposal/Response #4

\$1,000 COVID Recognition Pay

Union Accepts Cities Proposal from 6/14/2021

Coalition Union Counter Proposal/Response #5

Article 8.2: Vacation Leave.

8.2.2 For the life of this agreement (2021-June 30 2023) employees will continue to accrue vacation at the current rate in accordance with their years of service. Employees may only accrue vacation up to a maximum of ~~two (2)~~ three (3) times their annual accrual rate. Once an employee reaches their maximum accrued vacation limit, the employee will not accrue vacation until their vacation balance falls below the maximum limit..

Employees who currently have accrued vacation balances that are in excess of the limits below, will maintain their current balance, however they will not accrue vacation until their balance falls below the maximum limit, or have sold back an amount that brings them below their maximum accrual amount.

Coalition Union Counter Proposal/Response #6

CELL PHONE DATA REIMBURSEMENT PROPOSAL

Union Drops Proposal

Coalition Union Counter Proposal/Response #7

Classification Equity

Union Holds: Recreational Supervisors will receive a 5% equity adjustment next closest pay period after ratification of this agreement.

Coalition Union Counter Proposal/Response #8

ARTICLE 17 DISCIPLINARY ACTION—INCLUDING BINDING ARBITRATION

Union Drops Proposal

Coalition Union Counter Proposal/Response #9

Paid Parental Leave

Union holds proposal of eighty(80) hours of paid leave.

Coalition Union Counter Proposal/Response #10

Contracting Out—As proposed by City 4/23/2021

Union Accepts Proposal

Union Response to City Proposals

Coalition Union Response #1

Disciplinary Appeals (As proposed to AEA, CAMP, and AMSP on April 16, 2021)

City dropped proposal in last package offer on 6/2/2021

Union Response #2(Local 21 Only)

AMSP Eligibility for Overtime Proposal from City on 4/30/2021

City dropped proposal in last package offer on 6/2/2021

Union Response #3(Local 21 Only)

Executive Leave Prorating Proposal on 6/2/2021

Union Accepts Proposal

Union Response #4(AEA)

Class/Equity Study Side letter

Union Accepts Proposal

Any past proposals presented by The Union not presented or countered in this package shall be considered held as presented.