



**SAN JOSE POLICE
OFFICERS' ASSOCIATION**

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August 22, 2022

Jennifer Schembri
Director of Human Resources
Director of Employee Relations

RE: Response to your questions contained in your August 15, 2022 correspondence, RE: POA Negotiations

SJPOA Information Request

Revised Proposal on Wage

Dear Jennifer,

Below please find our responses to the City's observations and questions pertaining to the San Jose Police Officers' Association's (SJPOA) latest proposal. Below our responses is an information request and below that is a revised wage proposal.

The revised wage proposal is made to align directly with what Mayor Liccardo repeatedly told the residents of San Jose through his media blitz last week: that officers represented by the SJPOA are paid on average \$189,000 a year. Below are the Mayor's own words:

KTVU-2, San Jose police union says exodus of officers puts public safety at risk, August 2, 2022: Mayor Sam Liccardo responded to the claim at City Hall later in the day. "The officers that are represented by the police union are paid on average \$189,000 a year," he said.

SJ Spotlight, Fact check: San Jose police staffing at center of mayor's race, August 17, 2022: The average salary of an SJPD officer is \$189,000—the third highest among the Bay Area's 17 largest police departments, Mayor Sam Liccardo said.

Mercury News, San Jose police survey asserts morale, workload problems amid contract talks, August 10, 2022: Mayor Sam Liccardo, ...also noted that the average officer salary at SJPD is \$189,000 and is third highest among large Bay Area police departments.

The Mayor was emphatic and specific: **the average salary of San Jose police officers is \$189,000.**

Here are replies to your *observations and questions that we have italicized for easier reference*:

COVID Bonus City questions/observations

We would like to understand better the POA's reasoning for adding this bonus into the proposal. In addition, this is significantly more than the \$1,000 bonus provided to other City employees, many of whom also worked in the field during COVID (many as Disaster Service Workers). We would like to understand the POA's reasoning for such a significant difference in the amount proposed in comparison to the amount provided to other City employees.

POA Response

The hypocrisy of Councilmember Matt Mahan's public pronouncements criticizing Santa Clara County for providing COVID bonuses to their employees while he and Mayor Liccardo voted numerous times to provide COVID bonuses to City workers, while excluding police officers from receiving these bonuses, seems dishonest and just doesn't seem right. So we included a COVID bonus in our proposal.

The amount is modestly more than other City workers because **ALL** of our members were required to work throughout the COVID global pandemic exposing them to the deadly virus on a daily basis while performing their regular and normal job functions as they were in direct contact with all different segments of the community, many through physical contact. Plus we get shot at.

Continuing Professional Training (CPT) Requirement Pay City questions/observations

However, we are seeking additional information related to how the POA's proposal would impact current training requirements and why the POA believes their proposed changes to these training requirements are necessary at this time?

POA Response

Only those with a political tin ear or utter lack of understanding of the evolution of policing over the past several years would question the necessity for more frequent, ongoing, and expansive training for police officers. The community we serve has rightly demanded the most highly trained police officers to manage the increasing complex situations our officers face while utilizing the least force necessary to protect the public and responding officers.

We had assumed that, while touting the department's supposedly low "vacancy rate," Mayor Liccardo actually contemplated a staffing plan that builds in frequent, ongoing and expansive training of police officers to meet the challenges they face – not least: mental health calls for service; dangerous domestic violence calls for service; state and or federal law changes with regard to use of force; a duty to intervene, render aid, and de-escalate; and other best practices. Based on the City's questioning of the need for additional training, however, it appears our assumption was wrong.

Our proposal seeks to:

- **INCREASE** Strategic Communications training by 6 hours, above and beyond the 2 hour CPT minimum.
- **ADD A NEW TOPIC** of Duty to Intervene of 4 hours every 2 years.
- **PROVIDE MORE FREQUENT** Racial and Cultural Diversity/Racial Profiling Training to 8 hours above and beyond the 2 hours currently required every 5 years.
- Require these training be completed **EVERY 24 MONTHS** to keep officer's skills relevant and current.

...why the POA believes that additional pay is warranted for Officers.

POA Response

Better trained officers will create a safer San Jose. Better trained officers will improve outcomes when interacting with the residents we serve.

Please confirm that you are just proposing to increase the number of hours of CPT training, but that the training is the same as what is currently required of them to maintain their POST certification.

POA Response

We are not confirming this observation.

If the same, why is the POA proposing increasing the number of hours of CPT trainings they are already receiving beyond what POST requires?

POA Response

Please read our proposal: The proposed trainings are NOT the same. We propose an entirely new training module, duty to Intervene as well as expanding other trainings. By their very nature the expanded portion of these trainings means they are an improvement over what we have now.

Additionally, is the POA proposing that these additional CPT training hours be completed while an Officer is within their regular schedule, or is the POA proposing that these additional hours be completed in addition to an Officer's regular schedule, and will therefore likely result in overtime pay?

POA Response

A well-planned, fully-staffed police department deployment plan with appropriate Human Resources oversight will have the capability to avoid negatively impacting critical public safety services while simultaneously providing necessary training for its police officers as part of an Officer's regular schedule.

It's just a tad ironic that Mayor Liccardo and Councilmember Mahan proclaim the "vacancy rate" is low and that we are practically fully staffed yet there is this concerning question about trainings being provided on overtime. *Which is it?* Are we running short every day and have to scramble with mandatory overtime, volunteer overtime, and harvesting of detectives to provide basic patrol functions? Or is the "vacancy rate" low and staffing is all well? Pick one, as your City's police officers are getting dizzy trying to keep up with the spinning, conflicting and contradictory messages coming out of City Hall.

Drug and Alcohol Testing Policy questions/observations

What "objective facts" is the POA proposing be met in order for an Officer to be subject to reasonable suspicion testing?

POA Response

Physical signs: Bloodshot eyes/dilated pupils, slurred speech, unsteady walk/uncoordinated movements, shakes or tremors, unexplained sweating or shivering, fidgeting/inability to sit still, unusual body or breath odor, and deterioration in appearance/grooming.

Behavioral signs: Attendance problems—tardiness, pattern of absences or excessive absenteeism, decline in performance/productivity, acting withdrawn from others, secretive behavior and money management problems like excessive borrowing or stealing money.

Psychological signs: Unexplained changes in personality or attitude, sudden mood changes, irritability, angry outbursts or inappropriate laughing, unexplained fear or paranoia, inability to focus or concentrate.

Reasonable suspicion testing is already addressed in the Substance Abuse Program & Policy. Why does the POA believe that it is necessary to include the proposed language given that the City already has an existing policy on this issue?

POA Response

Due to (1) this being the first time POA may agree to a random drug testing policy; (2) the uniqueness of the job duties of our members as compared to other city employees, we want a specific policy that is not susceptible to change based on other employee needs and situations; and (3) past practices may exist with regard to how the Citywide policy is applied to other bargaining units, which POA is not aware of, nor wishes to be bound by.

Why is the POA proposing that where there are conflicts between the City's Substance Abuse Policy and the POA's proposed policy, the POA's proposed policy would control?

POA Response

See previous answer.

What issues has the POA identified related to the City's existing Substance Abuse Program & Policy that the POA believes is better addressed in its proposal?

POA Response

This is a subject within the scope of bargaining and POA seeks a policy specific to its bargaining unit given the unique role its members play in trying to keep San Jose safe while woefully understaffed.

Why is the POA proposing that the Department Program Administrator administer the policy?

POA Response

POA believes that Department administrators and managers will have a better understanding of the unique pressures police officers face. (See Section 1 Purpose.) That person will also be better able to facilitate communications (sec. 4, 5 and 13) and can focus on unique aspects of this policy as opposed to HRD staff, who oversee the entire City policy.

Additionally, why is the POA proposing that positive results be directly reported to the Police Department's Executive Command Staff? This is not current practice as currently any positive test results for City employees are directly reported to the Office of Employee Relations. Why does the POA believe this change is necessary?

POA Response

Because of the obvious disciplinary ramifications of a positive test. Nothing in the POA's proposal would prevent Executive Command Staff sharing this information with the Office of Employee Relations.

Please define what the POA believes is "confidential" related to an Officer being selected for random testing? It is necessary to be able to communicate appropriately when an Officer will be unavailable due to testing.

POA Response

Section 4 of our proposal applies to all notifications: reasonable suspicion and random. POA believes there are manifold reasons why news that an officer is under a reasonable suspicion of being intoxicated, etc., should be handled confidentially.

How does the POA propose addressing this?

POA Response

Necessary parties can simply be advised that the officer is out of service for the relevant period of time.

Please provide additional information related to what training the POA believes should be given related to the policy. Why does the POA believe that all department staff should receive training on the policy and what would this training entail?

POA Response

All employees should be trained about this policy. Drug and alcohol issues are critically important. Mistakes can cost careers, families and lives. Situations are highly emotive, which increases the tendency for people to make mistakes. Training should involve discussions, real-life scenarios, and simulations. Something akin to sexual harassment training for supervisors makes sense to POA.

As well as it being the right and smart thing to do, at least five other reasons support a robust training policy:

1. **To send the message that management and the union take this issue seriously:** safety is critical and catching problems early maximizes the chances of rehabilitating employees.
2. **Mitigate Risk Associated with Third-Party Drug Testing.** Train employees to make sure third party provider is following policy. (Third Party provider will presumably be administering policies for multiple employers/groups.) Labs are known to make mistakes – case law is replete with examples.
3. **Improve Efficiency and Workflow.** Avoid unnecessary tests.
4. **Fulfill Duty of Care.** Improperly conducted drug test can result in the loss of a job, disqualification from safety-sensitive duties, obligation to undergo treatment, and other potential burdens such as stigma. On the other hand, Department owes a duty to all employees in the workplace who may suffer from a testing program that fails to identify an employee who poses a serious safety risk as a result of substance use or abuse.
5. **Liability.** Flawed actions could result in claims against City or Department personnel for negligence, payment of unemployment claims, payment of workers' compensation claims, and other possible legal claims.

Random Testing – Why does the POA believe that 10% of Officers should be tested up to two times in a 12-month period as opposed to 25% of Officers as proposed by the City on May 11, 2022? Why is the POA proposing that the Department Program Administrator facilitate all requests for reasonable suspicion tests, as opposed to following what is already provided for in the City's Substance Abuse Program & Policy? It is expected that a Department Program Administrator may not be available at all times. How does the POA propose addressing this?

POA Response

POA believes 10% is the right place to start. There are currently no random drug tests. Every random drug test is going to take (potentially) multiple police officers out of service. The Police Department, despite the alleged "low vacancy rate," continues to fall behind response time targets for Priority 1 and Priority 2 calls. POA believes this number strikes a balance between the necessity of drug testing and the impact to police services. The percentage can be revisited, by mutual agreement, if the higher staffing and results justify it.

Vehicular Accidents – Why does the POA believe that Officers should only be tested after a vehicular accident that resulted in an injury as opposed to testing after any vehicular accident as proposed by the City? Why are you proposing only testing for alcohol and not drugs? If the POA believes that no employee should be under the influence of alcohol or drugs at any time, why limit this to just alcohol and vehicle accidents that result in injury?

POA Response

To test after every ill-defined vehicle accident will be a massive time suck. The POA estimates that under the City's proposals, the countless "accidents" that occur every week, would trigger testing. Doors hitting doors, fenders tapping fenders, etc. Drug testing after every minor damage-only accident will keep officers out of service longer, and compound the response time problems already faced by the Department.

POA supports drug testing after injury accidents.

In answer to the last question, the POA proposal attempts to balance safety, practicality and realism.

Is the POA's intent to match what is provided for in the Federal DOT Drug and Alcohol Testing Policy? If so, why is it necessary to include this section as opposed to referring to the Federal DOT Drug and Alcohol Testing Policy?

POA Response

So that if the City seeks to amend the list, it meets with and discusses any impacts of the change with the POA.

Why is the POA proposing to have a second test performed if an Officer tests positive for drugs or alcohol? As the POA is aware, obtaining results from a first test will delay the timing of a second test being performed and may therefore affect the results as certain substances may leave the Officer's system within that timeframe.

POA Response

Given the consequences that flow from a positive drug test, a second drug test (1) confirms a positive, (2) reduces likelihood of false positives, and (3) (relatedly) reduces claims that first test is a false positive.

Discipline and Officer Support and Rehabilitation – Again, this is addressed in the POA MOA and existing City policies. Why does the POA believe these provisions are necessary?

POA Response

These are more developed than existing language, which is in many cases long overdue for an update. This is also more specific to drug and alcohol issues. It also provides an inducement for employees to self-report and increases the chances of turning around and saving employees with issues.

Overall, there are instances in which only drug or only alcohol testing is mentioned, please clarify if the POA is proposing specific drug or alcohol testing where noted in the proposal or if the intent is the Officer will be tested for both alcohol and drugs when subject to testing?

POA Response

Please provide specific examples.

Community Policing questions/observations

As you are aware, moving shift change from every 6 months to annually was agreed to by the POA during 2016 negotiations with the City and was in an effort to improve Community Policing.

POA Response

Of course we are aware of what is included in our contract. Unfortunately, this "effort" has failed and those of us trying to engage in community policing know it. As such, we no longer want to participate in paper overing our utter lack of community policing with a contract provision about shift change length. Shouting from the mountain top that we have year-long shifts and equating that to community policing is pulling the wool over our resident's eyes.

Our proposal is detailed, comprehensive and factual and we hold to our Community Policing proposal.

Information Request

For the years 2021 and 2022, from the attached spreadsheet, please identify all individuals that are currently sworn members of the San Jose police department. For the years 2021 and 2022 from the same attached spreadsheet, please identify all individuals who have submitted their intent to retire as a sworn member of the San Jose police department with their intended retirement date.

Revised Wage Proposal #3 August 22, 2022

All other components of our previous proposals remain intact.

Wages:

July 1, 2022: 4% Continuing Professional Training Requirement +
4% Base Wage Increase

\$5,000 Lump Sum COVID Premium Pay to each bargaining unit member.

July 1, 2023: 2% Continuing Professional Training Requirement Pay +
4% Base Wage Increase

-OR-

Mayor Sam Liccardo negotiating on KTVU-2, August 10, 2022

"The officers that are represented by the police union are paid on average \$189,000 a year," he said.

July 1, 2022

We would accept the Mayor's offer of \$189,000 for police officers. To ensure we avoid compaction this would increase Sergeants to \$218,000, Lieutenants to \$253,000 and Captains to \$292,000.

\$5,000 Lump Sum COVID Premium Pay to each bargaining unit member.

Sincerely,

Sean Pritchard, President
SJPOA

CC: San Jose City Council
Chief Mata
Assistant Chief Joseph
SJPOA Members
Gregg Adam
Tom Saggau

