

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** February 1, 2008  
**TO:** Honorable Mayor Jerry Sanders  
**FROM:** City Attorney  
**SUBJECT:** Bargaining Position with Labor Unions

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In 2004 voters passed Proposition F giving the City of San Diego a Strong Mayor form of government. The argument in favor of Proposition F stated, in part:

**MAYOR NEEDS AUTHORITY TO MAKE CHANGES**

Currently, the authority to run the City of San Diego is held by an unelected City Manager. Proposition F ends the buck-passing and finger-pointing. Proposition F gives you the power to elect someone with **the authority to make changes.**

Under prior practice, conflicts between the City Manager and the labor unions over the terms and conditions of employment were resolved by Council directive issued to the City Manager in closed session. Those practices were a principal cause of the City's \$2 billion pension and retiree health care deficit. In the hopes of changing such practices, voters were given the opportunity to create a Strong Mayor form of government with Proposition F in the November 2, 2004, election.

The Proposition F ballot proposition argument expressly represented that under the Strong Mayor form of government the Mayor would have "the authority to make changes." The present Mayor believes that voters gave him the authority to set the City's bargaining position in collective bargaining, so long as he acts reasonably and in the best interests of the City of San Diego. The present Mayor has made it clear that he does not intend to follow past practices in which the City's position in collective bargaining was directed by the City Council through the

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City Manager. This is a correct and appropriate conclusion under the voter-approved transformation to a Strong Mayor form of government. In enacting Proposition F, voters gave the Mayor the power he seeks to exercise in connection with the City's bargaining position with the unions.

Consistent with the passage of Proposition F, Charter sections 260 and 265 were added which delineate the powers and authority of a Strong Mayor. Under Section 260, the Strong Mayor has all the powers and authority previously conferred upon the City Manager set forth in Articles V, VII and IX. Charter Article V, section 28 vested all administrative powers (except those specifically otherwise provided in the Charter) conferred by the laws of this state in the City Manager (now Strong Mayor). Section 265 confers additional powers and authority to the Strong Mayor, which include executing and enforcing all laws, ordinances, and policies of the City, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the City.

The above transformation to a Strong Mayor form of government materially and substantially rendered moot the impasse procedure as set forth in Council Policy 300-06 because the new Mayor doesn't report to the City Council as the City Manager once did. Prior to the enactment of strong Mayor, the City Manager, who was appointed by the City Council, was appropriately given constant direction during the meet and confer process. With the advent of strong mayor, it would be wholly inconsistent with the intent of the voters who adopted Strong Mayor, for the City Council to give direction to the Mayor, an independently elected official "empowered to enact change" in city government.

As such, the City currently has no impasse procedure, thereby requiring that one be drafted. Consistent with the Strong Mayor form of government, it is the Mayor's role to set forth a new impasse procedure. Subsequent to negotiations with the bargaining organizations, the procedure will be set forth in an Administrative Regulation, and Council Policy 300-06 will be presented for amendment accordingly.

It is recommended that the impasse model as set forth in the State of California Education Employment Relations Act [EERA] be utilized. This model is recommended because it is a statutory scheme that lays out a specific process for impasse, provides for independent fact finding, and is a law within the jurisdiction of PERB that it utilizes regularly. The EERA provides for an impasse resolution procedure that utilizes an independent fact finding panel. Upon impasse, either party may, by written notification to the other, request that their differences be submitted to a fact finding panel. The panel shall meet with the parties or their representatives, make inquiries and investigations, hold hearings, and take any other steps as it may deem appropriate. As a result of the fact finding process, the panel shall recommend terms of settlement, which shall be submitted to the parties. The parties have an affirmative duty to consider the fact finder's findings in good faith, and attempt to use it to effectuate a settlement.

It is recommended that the EERA model described above be utilized by the City, with the City Council acting as the fact finding panel. As such, when either the City or the exclusive

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representative declares that an impasse has been reached between the parties in negotiation over matters within the scope of representation, that party shall submit their differences to the City Council, who shall act as a fact finding panel with the power to recommend terms of settlement. The City and its exclusive representative, the Strong Mayor, shall consider Council's recommendations in good faith, and attempt to effectuate a settlement based on Council's recommendations. Ultimately, it is the Strong Mayor premised upon the authority vested in him/her under the City Charter, to accept or reject the Council recommendations.

As the Mayor and his designees are the exclusive labor negotiators and the Council, under the EERA model, sits as an independent fact finding panel on economic issues<sup>1</sup>, there can be no closed session briefings of negotiation progress with Council, nor contact by Council members with either party regarding these issues outside the scope of the fact finding process.<sup>2</sup> While Council still has the obligation to adopt an annual salary ordinance, it may not use such obligation as a means of circumventing the preclusion of its negotiating directly with the parties. It must remain independent to safeguard its ability to satisfy its fact finding function under the EERA model.

Attached for your reference is a draft proposed regulation incorporating the EERA model.

MICHAEL J. AGUIRRE



City Attorney

MJA:amt  
Attachment

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<sup>1</sup> Only on economic issues, non-economic are exclusively managerial, and thus no fact finding or other process is needed.

<sup>2</sup> We note that the Mayor and Council do not have authority to negotiate with the employees of other elected officials.

## SUBJECT

### IMPASSE RESOLUTION

#### 1. Purpose

- 1.1 To assign responsibility and establish procedures for the resolution of a bargaining impasse between the City and an exclusive representative regarding matters within the scope of representation.

#### 2. Authority

- 2.1 City of San Diego City Charter, Article XV, § 265, provides the Mayor with the right, power and duty to execute and enforce all laws, ordinances, and policies of the City, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the City.

#### 3. Policy

- 3.1 When either the City or the exclusive representative declares that an impasse has been reached between the parties in negotiation over matters within the scope of representation, that party shall submit the differences to the City Council, who shall act as a factfinding panel. The factfinding panel may recommend terms of settlement, which recommendations shall be advisory only and shall be considered in good faith by each party.

#### 4. Scope

- 4.1 The procedures set forth in this A.R. shall apply in instances where the City or an exclusive representative declares that an impasse has been reached between the parties in negotiations over matters within the scope of representation.

#### 5. Definitions

- 5.1 Impasse means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

#### 6. Procedures

- 6.1 Either the City or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation.
- 6.2 If either party declares that an impasse exists, it shall, by written notification to the other, request that their differences be submitted to the City Council, who shall act as a factfinding panel.
- 6.3 The Council shall, within 20 days after receiving the written notification of impasse, schedule a Council meeting regarding the impasse.
- 6.4 For the purpose of the factfinding, officers of the City shall furnish the Council, upon its request, with all records, papers and information in their possession relating to any matter regarding the impasse.
- 6.5 In arriving at their findings and recommendations, the Council shall consider, weigh, and be guided by all the following criteria:
  - (1) State and federal laws applicable to the employer.
  - (2) Stipulations of the parties.
  - (3) The interests and welfare of the public and the financial ability of the City.
  - (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in the cities of comparable communities.
  - (5) The consumer price index for goods and services, commonly known as the cost of living.
  - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
  - (7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.
- 6.6 If the dispute is not settled within 30 days, Council shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only.
- 6.7 Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties, which shall be considered in good faith by each party.