



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 26, 2010

ITEM NUMBER: 1

SUBJECT: EMPLOYEE ASSOCIATION AGREEMENTS
DATE: OCTOBER 25, 2010
FROM: KIMBERLY HALL BARLOW, CITY ATTORNEY'S OFFICE
PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

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RECOMMENDATION:

Consider proposed agreements with Costa Mesa City Employee's Association, Costa Mesa Police Management Association, Costa Mesa Police Association, and Costa Mesa Fire Management Association.

BACKGROUND:

Council approved at its special meeting of October 12, 2010 a revised MOU with the Costa Mesa Fire Association (CMFA). It has now being asked to consider for adoption MOUs with the Costa Mesa City Employee's Association (CMCEA), Costa Mesa Police Management Association (CMPMA), Costa Mesa Police Association (CMPA), and Costa Mesa Fire Management Association.

Some questions have arisen regarding the laws and rules governing negotiation and approval of public employee contracts, as well as impasse and related procedures. The purpose of this memorandum is to advise the Council and the public as to those laws and rules and not to recommend any particular action on the agreements being considered.

ANALYSIS:

California has an extensive statutory scheme governing the negotiation and implementation of public employee contracts, known as the Meyers-Millias-Brown Act (MMBA). In addition, state and federal constitutional law restricts steps that local governments may take regarding vested contractual rights, such as those relating to pensions. For example, a City may not unilaterally repeal all pension provisions. *Kern v. Long Beach*, 29 Cal. 2d 848, 179 P.2d 799 (1947). Under the MMBA, the City and each employee association must negotiate in good faith in order to reach agreement on matters within the scope of representation, including compensation, hours and terms and conditions of employment. Cal. Gov't Code section 3505. The "good faith" requirement is measured by whether each side subjectively and genuinely desires to reach agreement. Only if good faith bargaining leads to a genuine impasse, or inability to reach agreement, may the City implement (often referred to as "imposing") its last, best and final offer. Agreements may not be unilaterally implemented. Impasse requires that negotiations have reached the point in which the differences in position between the parties are "so substantial or

prolonged that future meetings would be futile.” Cal. Gov’t Code section 3540.1(f). Pursuant to Government Code section 3507, the City adopted an Employer-Employee Relations Resolution (No.95-63) in August 1995. This resolution includes several provisions which govern both negotiations and impasse procedures. For example, section 19 of the Resolution provides:

If agreement is reached by the representatives of the City and the recognized employee organization, all agreed matters shall be incorporated as joint recommendations to the City Council in a written Memorandum of Understanding signed by the Employee Relations Officer or his designee, and the duly authorized employee representatives. Said Memorandum of Understanding shall not be binding, but said joint recommendation shall be submitted to the City Council for its determination.

Thus, the proposed side letters modifying and partially extending existing Memoranda of Understanding between the City and the various employee groups have been agreed to by the Employee Association representatives and the City’s authorized representatives. If the Council determination is not to approve any or all of the agreements, then further direction will need to be provided to the City’s negotiators and additional good faith negotiations will have to occur. The City is not currently in a position to declare impasse as to any of the employee associations. Instead, further negotiations will need to occur if the agreements are not approved in order to determine what areas of negotiation are not resolved and to attempt to reach resolution. If the proposal brought to Council by its negotiators is not acceptable, then there is no “last, best and final” offer to be implemented at this point, and further negotiations may still resolve any area of disagreement.

Under the MMBA, “If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. *The unilateral implementation of a public agency’s last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.*” Cal. Gov’t Code section 3505.4 (emphasis added).

This means that the City may unilaterally implement a multi-year contract only if impasse is reached, and only consistent with the City’s last best and final offer. If such an implementation occurs, the City will have to meet and confer each year with any employee organization as to which it unilaterally implements an offer, and as to each issue included in the implementation.

As to the issue of whether the City may unilaterally impose a two-tiered retirement program on new hires, it could only do so if that was a part of the City’s last, best and final offer. Except for CMCEA, none of the current proposed agreements include creation of a second tier retirement plan for new employees.

ALTERNATIVES CONSIDERED:

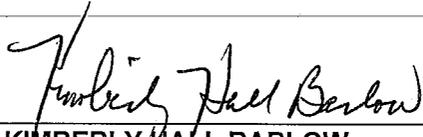
No alternatives were considered as the City has an obligation to follow the MMBA.

FISCAL REVIEW:

Fiscal review of the proposed agreements is set forth in the Agenda report submitted by staff. If any of the proposed agreements are not approved, there will be fiscal impacts in an unknown amount due to delay in implementation of any new compensation provisions while negotiations continue.

CONCLUSION:

Staff has recommended approval of the various agreements based on prior negotiating direction from the Council and tentative agreements reached as a result. The Council may not unilaterally modify any of the proposed agreements in any material respect, such as changing the time period involved, compensation provisions, creating multiple tiers of retirement plans, etc. If any of the agreements is not approved, Council will need to give additional direction to the city's negotiators to resume good faith negotiations undertaken with the goal of reaching agreement on outstanding issues. If impasse ultimately results from any continued negotiations, the City can only impose its last, best and final offer, subject to meet and confer each year prior to budget approval.



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