

ORDINANCE NUMBER O- **15789** (New Series)

Adopted on **AUG 2 1982**

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTIONS 22.1020, 22.1021, 22.1022, 22.1023, 22.1024, 22.1025, 22.1026, 22.1027 AND 22.1028.

WHEREAS, the voters, in 1976, approved an amendment to the San Diego City Charter by creating Section 129.1 entitled "Removal of Striking Employees;" and

WHEREAS, the City Council is desirous of enacting procedures in conformance with and for the administration of Charter Section 129.1; and

WHEREAS, the City has exhausted its meet and confer obligations with its respective employee organizations; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter II, Article 2, Division 10 of the San Diego Municipal Code be and the same is hereby amended by adding Sections 22.1020, 22.1021, 22.1022, 22.1023, 22.1024, 22.1025, 22.1026, 22.1027 and 22.1028 to read as follows:

SEC. 22.1020 PURPOSE

Charter Section 129.1, in part, prohibits employees from instigating, participating in or providing leadership to a strike or to engage in any form of concerted action to withhold their services from the City.

The purpose of this article is to provide uniform procedures for the administration of Charter Section 129.1.

SEC. 22.1021 DEFINITIONS

It is intended that the definitions provided herein shall govern any and all actions pursuant to Section 129.1 and the construction of this article.

a. Strike:

A work stoppage, slowdown, sick-out or any other concerted interruption of operations by employees.

b. Concerted Action to Withhold Service:

Any activity by two or more employees, including planning thereof, intended to interrupt, stop, disrupt, or slowdown the services they or other employees are employed to perform or the operations of the City.

c. Participate In:

As used herein, such term means to actively and willfully participate in a strike or a concerted action to withhold service.

d. Instigate:

As used herein, such term means to goad, influence, or urge other employees to participate in an actual or proposed strike or concerted action to withhold services.

e. Offer Leadership:

As used herein, such term means to influence

or direct other employees to engage in an actual or proposed strike or concerted job action by force, example or persuasion.

f. Proposed Strike or Concerted Action to Withhold Services:

As used herein, such phrase means a plan or scheme, agreed to by two or more employees, which is intended by the employees to lead to or result in an actual strike or concerted action to withhold services.

g. Other Appointing Authority:

As used herein, such term shall mean a department head not appointed by or responsible to the City Manager.

h. Job Action:

As used herein, job action shall mean an actual or proposed strike or any form of concerted action to withhold services as those terms are defined in this Division.

SEC. 22.1022 EMPLOYEE RIGHTS

Nothing herein is intended nor shall it preclude City employees from expressing their views, as an abstract concept, on the right of public employees to strike. It is intended that these provisions and San Diego Charter Section 129.1 shall be limited to those circumstances in which employees actually strike or withhold their services or take action(s) intended to result in such action.

SEC. 22.1023 INVESTIGATION AND NOTICE

The City Manager or other appointing authority(s) shall be responsible for investigating actual or proposed job actions involving City employees. The investigation shall include the identification of those involved and the collection of pertinent facts.

In the event the City Manager or other appointing authority, as a result of such investigation, concludes that an employee has instigated, provided leadership for or participated in a job action, such employee shall be notified of the results of the investigation. The notice shall include the following:

(a) That the employee has been charged with a violation of Charter Section 129.1 and a simple statement of the factual basis of the charge.

(b) All information which was relied upon in making the charge including any investigative materials.

(c) That a violation of Charter Section 129.1 shall result in his or her termination.

(d) That the employee shall have the right to be represented at all stages of any proceedings.

(e) The following phrase:

"You have been charged with a violation of Charter Section 129.1. At your request, a hearing on your behalf will be convened.

The evidence supporting this charge will be presented and you have the right to present evidence in your defense. If it is your desire to participate in such a hearing, notify me within five (5) calendar days of receipt of this notice. If you do not notify me within five (5) days, I will presume that you do not deny the charges contained herein and you will be terminated."

As part of such notice, the City Manager or other appointing authority may also elect to suspend such employee without pay for up to thirty (30) days pending final resolution of the charges. Such a suspension is not a disciplinary action and the suspension itself may not be appealed. If the charges are subsequently sustained, the employee shall be terminated and shall not receive pay for the period of suspension. If the charges are determined to be unfounded, the employee shall be restored to duty and paid for the term of suspension.

SEC. 22.1024 HEARINGS

Upon the timely receipt of a notice of a charged employee's desire to participate in a hearing, the City Manager or other appointing authority shall be responsible for convening such hearing. The City Manager or other appointing authority shall select the

hearing officer(s). Such hearing officer(s) may be presently employed by the City so long as such employee had no direct involvement in the investigation of the alleged Charter Section 129.1 violation.

If as a result of an alleged job action, there are multiple employees charged with a violation of Charter Section 129.1, the City Manager or other appointing authority may select multiple hearing officers to hear various individual cases.

SEC. 22.1025 CONDUCT OF HEARING

The proceedings shall be as informal as is compatible with the requirements of justice. The hearing officer need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry into the matter in the manner which is best calculated to make a just factual determination.

The sole responsibility of the hearing officer shall be to determine whether or not the charges are supported by the evidence presented. If the hearing officer finds that it is not possible to resolve the factual issues presented, absent the resolution of a question of law, such legal issue shall be referred to the City Attorney for guidance.

The appointing authority's representative shall present evidence in support of the charges. The employee shall then present such evidence as he or she may wish to offer in defense.

The testimony taken at the hearing shall be under oath and shall be recorded by a reporter. The hearing officer(s) shall have the power to subpoena and require the attendance of witnesses and the protection of pertinent documents. The hearing may be continued from time to time; however, the hearing should proceed as expeditiously as possible.

Prima Facie Case:

The appointing authority shall have established a prima facie case that the employee participated in a strike upon a showing that:

(a) a strike or job action occurred.

(b) the employee was absent, without department head authorization, during any part of the period of time the strike occurred.

Such a showing shall shift the burden to the employee to offer evidence in defense.

Report:

At the conclusion of the hearing, the hearing officer(s) shall report his or her findings to the City Manager or other appointing authority. The hearing officer(s) shall determine if the charges against the employee are supported by the evidence and report those factual findings made in support of such determination.

SEC. 22.1026 COMMON HEARING

If the City Manager or other appointing authority, as a result of their investigation, determines that there are preliminary factual allegations common to two or more individuals, and that a determination of the validity of those common preliminary allegations would be a necessary part of each individual hearing, he or she may convene a common hearing. The hearing officer at such hearing will determine the validity of such preliminary common allegations. An example of such preliminary question may be whether under a given set of facts a job action took place.

1. Each employee who may be affected by such determination in the common hearing shall be notified of the time and place of such hearing and the allegation subject to a determination.

2. The appointing authority shall bring evidence relevant to the issues before the hearing officer. Any affected employee may offer evidence relevant to the issues raised.

3. At the conclusion of the hearing, the hearing officer shall make a determination and render his or her report to the convening authority(s) and parties. Upon receiving such report, the City Manager or other appointing authority may accept the report as a final disposition of the facts reviewed or send such

report back to the hearing officer with specific questions. If the report is returned to the hearing officer, he or she shall answer the specific questions posed. If necessary, the hearing officer shall be empowered to conduct further hearings into the matter.

SEC. 22.1027 FINAL ACTION

The City Manager or other appointing authority shall determine if, based on the factual findings of the hearing officer(s), the employee has violated Charter Section 129.1. The City Manager or other appointing authority, upon receiving the hearing officer(s) report, shall have the discretion to ask the hearing officer(s) to make further finding in response to specific questions.

Employees charged under this section who do not initially contest the charges, abandon their hearing rights prior to the conclusion of the hearing, or are found to have violated Charter Section 129.1 shall be immediately dismissed. Such action of the appointing authority is final and shall not be appealable.

Such dismissed employee shall not be reinstated or returned to employment. However, he or she may be rehired, at some future date, as a new employee. Such employment as a new employee shall be in accordance with the employment practices then in effect.

SEC. 22.1028 ECONOMIC JOB ACTIONS

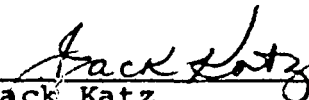
If a job action occurs during a period when the City is meeting and conferring with the recognized bargaining agent for a unit of employees or if the focus of the job action is to protest any offer by the City of San Diego concerning wages, hours, or other terms and conditions of employment, the last offer by the City shall become final for that bargaining unit. The City Council shall be precluded from making any improvement in the wages, hours, and working conditions for employees in that unit until July 1 of the next calendar year.

The provisions of this section shall be invoked by the City Council upon the City Manager presenting evidence of a violation of the prohibitions contained herein.

Section 2. This ordinance shall take effect and be in force on September 3, 1982, which is more than thirty days from and after its passage.

APPROVED: John W. Witt, City Attorney

By



Jack Katz
Chief Deputy City Attorney

JK:smm
7/6/82
0-82-267
Or.Dept:Mgr.
Form=r.none
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Passed and adopted by the Council of The City of San Diego on AUG 2 1982,
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON
 Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Wayne L. Portnow, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 19 1982

AUG 2 1982

, and on _____

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Wayne L. Portnow, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-15789 Adopted AUG 2 1982

RECEIVED
CITY CLERK
[Signature]

CERTIFICATE OF PUBLICATION

1982 AUG 24 AM 10:52

SAN DIEGO, CALIF.

SAN DIEGO, CITY OF
12th floor, 202 C St.
San Diego, CA 92101

ATTN: PONTECORVO

IN THE MATTER OF

NO.

ORDINANCE NO. O-15789

ORDINANCE NO. O-15789
(New Series)
AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 2,
DIVISION 16, OF THE SAN DIEGO MUNICIPAL CODE BY
ADDING SECTIONS 22.1620, 22.1621, 22.1622, 22.1623,
22.1624, 22.1625, 22.1626, 22.1627 AND 22.1628.
This ordinance amends the San Diego Municipal Code by adding various sections thereto which establish uniform procedures for the administration of Section 129.1 of the Charter. The provisions define the pertinent terms used, clarify employee rights and requirements for notice and investigation. Further, set forth the method and manner pursuant to which the hearing shall be conducted and final action, as a result thereof, be taken. The provisions were considered during meet and confer session with employee organizations and the City's meet and confer obligations were exhausted.
Introduced on JULY 19, 1982.
Passed and adopted by the Council of The City of San Diego on AUGUST 2, 1982.
AUTHENTICATED BY:
PETE WILSON, Mayor of The City of San Diego, California
CHARLES G. ABDELNOUR, City Clerk of The City of San Diego, California.
By MAYDELL L. PONTECORVO, Deputy
August 16, 1982

I, Charlene Casselman, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NO. O-15789
(New Series)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

August 16, 1982

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 16th day of Aug, 19 82

Charlene Casselman
(Signature)

2-3/8" x 2 x 8.87 x 1 = 42.13

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