

RESOLUTION NUMBER R- 310278

DATE OF FINAL PASSAGE MAR 10 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AND RATIFYING A TENTATIVE AGREEMENT TO AMEND THE CITY'S MEMORANDUM OF UNDERSTANDING WITH THE CALIFORNIA TEAMSTERS LOCAL 911 REGARDING WORKERS' COMPENSATION PRESUMPTIONS.

WHEREAS, on October 1, 2013, by San Diego Resolution R-308479 (Oct. 15, 2013), the San Diego City Council (Council) approved a Memorandum of Understanding (MOU) between the City of San Diego (City) and the California Teamsters Local 911 (Local 911) regarding terms and conditions of employment for Fiscal Years 2014 through 2018; and

WHEREAS, from June 2014 until January 21, 2016, the City and the Local 911 met and conferred on a proposal to amend the MOU, by adding an article to provide workers' compensation presumptive illness coverage to certain employees represented by Local 911; and

WHEREAS, generally, before an employer can be held liable under California's workers' compensation law, an injured worker must prove, by a preponderance of the evidence, that an injury was caused by the employment, as stated in California Labor Code (Labor Code) sections 5705 and 3202.5; and

WHEREAS, the Labor Code gives certain peace officers and firefighting personnel the benefit of legal presumptions, which means that certain injuries, if sustained by the employee, are presumed to be caused by their employment; and

WHEREAS, under California law, presumptions provide that when specified public employees develop or manifest particular injuries or illnesses, during their employment or within specified periods thereafter, the injury or illness is presumed to arise out of and in the course of their employment; and

WHEREAS, a workers' compensation presumption reallocates the burden of producing evidence by imposing it on the employer rather than on the injured employee who has filed a workers' compensation claim; and

WHEREAS, under California Evidence Code section 606, when a presumption applies, the employer must provide workers' compensation benefits for that injury unless it has evidence to rebut the presumption; and

WHEREAS, compensation to be awarded under California workers' compensation law includes full hospital, surgical, medical treatment, disability indemnity, and death benefits; and

WHEREAS, City lifeguards are entitled to a skin cancer presumption without action of the Council because they meet the definition of an eligible employee for this presumption in the Labor Code; and

WHEREAS, certain City lifeguards with the Boating Safety Unit are entitled to specified presumptions as peace officers under California Penal Code section 830.33; and

WHEREAS, the City's labor negotiators and Local 911 representatives have met and conferred to extend presumptions to a broader group of lifeguards, through a collective bargaining agreement; and

WHEREAS, the City's labor negotiators and Local 911 representatives have reached a tentative agreement to amend the MOU to add a new article, Article 83 entitled "Workers' Compensation Illness," to provide specified Labor Code presumptions to the classifications of Lifeguard II and higher; and

WHEREAS, under the negotiated tentative agreement, the specified presumptions will only apply to active, represented employees in the classifications of Lifeguard II and higher, who develop conditions that are diagnosed after the date the Council approves the agreement; and

WHEREAS, under the negotiated tentative agreement, the City reserves its rights to assert any applicable defenses to a workers' compensation claim, as permitted by the Labor Code and other applicable law and regulations interpreting the Labor Code; and

WHEREAS, the negotiated tentative agreement is intended to be read in accordance with the provisions of the Labor Code in effect at the time the agreement is approved and as may be amended from time to time in the future; and

WHEREAS, in compliance with San Diego Charter (Charter) section 70.2, prior to establishment of the City's bargaining position on this matter, the City obtained an actuarial analysis from the actuary for the City's Retirement System, which identifies and discloses the impact on the City's defined benefit pension plan of any increases in proposed compensation or benefits; and

WHEREAS, in compliance with Charter section 70.2, the City referred the tentative agreement to the Retirement System's actuary to update the initial actuarial study to include any additional fiscal impacts of the tentative agreement; and

WHEREAS, the actuarial study has been posted and available to the public for review for ten days prior to Council consideration of the tentative agreement; and

WHEREAS, under the Meyers-Milias-Brown Act (MMBA), the state law related to collective bargaining between the City and its represented employees, and Council Policy 300-06, it is within the discretion of the Council to approve and ratify the negotiated tentative agreement; and

WHEREAS, under Charter section 11.2, the negotiated tentative agreement proposes to amend the multi-year MOU and, therefore, requires approval by two-thirds of the Council, in accordance with San Diego Charter section 11.2; and

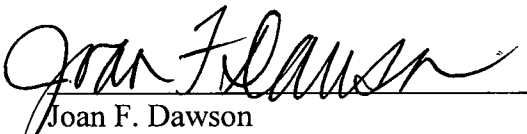
WHEREAS, the Council finds it is in the best interests of the City to approve the negotiated tentative agreement to amend the MOU, by adding Article 83, to provide workers' compensation presumptions that are in line with the work of lifeguards; and

WHEREAS, the Council intends for the negotiated tentative agreement to take effect upon the effective date of this Council's action, and also intends for Article 83 to be incorporated into any successor MOU that is negotiated and approved in the future, in accordance with the MMBA and Council Policy 300-06. NOW, THEREFORE,

BE IT RESOLVED that, pursuant to the authority of the MMBA and Council Policy 300-06, the Council of the City of San Diego approves and ratifies the tentative agreement between the City and Local 911, to amend the MOU by adding Article 83, entitled "Workers' Compensation Presumptive Illness"; the tentative agreement is on file in the Office of the City Clerk as Document No. RR- 310278

BE IT FURTHER RESOLVED that, the Council directs the City's labor negotiators to take any and all action necessary to incorporate Article 83 into any successor MOU between the City and Local 911 that is negotiated and approved in the future, in accordance with the MMBA and Council Policy 300-06.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Joan F. Dawson  
Deputy City Attorney

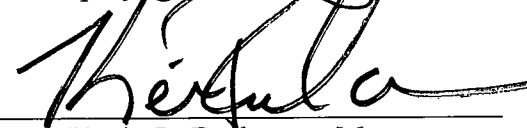
JFD:ccm  
February 12, 2016  
Or.Dept: Human Resources  
Doc. No.: 1223653

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 29 2016.

ELIZABETH MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3/9/16  
(date)

  
Kevin L. Faulconer, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
Kevin L. Faulconer, Mayor

Passed by the Council of The City of San Diego on FEB 29 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Date of final passage MAR 10 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By *Aty Beach*, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 310278