

MEMORANDUM OF LAW

DATE: February 8, 2002
TO: Councilmembers Toni Atkins and Ralph Inzunza
FROM: City Attorney
SUBJECT: Union Presentations in Council Closed Session Meetings

QUESTION PRESENTED

May a representative of each of the City's four recognized bargaining units make a presentation of the bargaining unit's meet and confer proposals in a closed session meeting of the City Council?

SHORT ANSWER

No. The provisions of the Ralph M. Brown Act [Act] contained in California Government Code sections 54950 through 54962, prohibit closed session meetings for any purposes other than those specifically exempted by the Act. Section 54957.6 provides an exemption that permits Council to meet with its designated representatives, but that exemption would not apply to employee bargaining representatives.

BACKGROUND

Representatives of the City's recognized bargaining units have requested permission of the City Manager and the City Council to present their respective union's proposals to the entire City Council in a closed session meeting. Such presentations have not been requested nor permitted in past years. However, complete written copies of each of the union's proposals are provided to Council so that the Councilmembers have adequate background information to discuss union and management proposals in closed session with their designated representatives. Representations have been made by union officials that closed session presentations by unions are permitted by other legislative bodies subject to the Act. You have requested a legal opinion on whether such actions would be permitted under the Act.

ANALYSIS

The Act requires that “ . . . [A]ll meetings of the legislative body of a local agency shall be open and public. . . except as otherwise provided in this chapter.” Cal. Gov’t Code 54953(a). Closed sessions that involve meet and confer issues are exempted from the public meeting requirements by the Act at Section 54957.6(a) which provides:

. . . a legislative body of a local agency may hold closed sessions with the local agency’s designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation . . . Closed sessions of a legislative body of a local agency, as permitted in this section, *shall be for the purpose of reviewing its position and instructing the local agency’s designated representatives.* (emphasis added)

As a general rule, a statute should be applied according to its plain meaning. *Solberg v. Superior Court*, 19 Cal. 3d 182, 198 (1977). Here, the meaning of the statute is evident. Council may meet with its designated representative in closed session to discuss the City’s bargaining position. The designated representative of the City is the management negotiating team appointed by the City Manager and approved by resolution of the Council. The Act does not permit closed session meetings on meet and confer issues with anyone other than the designated representative. On this issue the Attorney General has said, "the clear wording of Section 54957.6 as well as the legislative history of the section compels the conclusion that the section was not intended as a blanket authorization for executive sessions on all 'meet and confer' items . . ." 61 Op. Cal. Att’y Gen. 323, 327 (1978).

In addition to employing the plain meaning rule of statutory interpretation, the courts have said “[t]he language of a statute should be construed to effect, rather than defeat, its evident object and purpose.” *Brodsky v. Seaboard Realty Co.*, 206 Cal. App. 2d 504, 516 (1962). The purpose of the meet and confer exemption is to give Council an opportunity to discuss its position with respect to meet and confer issues. Through the permitted closed sessions, Council and the City’s designated representative have the opportunity to discuss the strengths and weaknesses of the City's bargaining position with respect to economic issues, as well as any other meet and confer issues that are inextricably bound up with the economic issues. Only through this open exchange of ideas can Council and its designated representative develop a bargaining strategy that best meets the needs of all parties. No other purpose for the meet and confer closed session exemption can be inferred from the plain language of the statute.

The unions have asked that Council find an implied exemption to the closed session provision of the Act. This would give the union representatives the same access to Council as that given to Council’s designated representative enabling the unions to discuss bargaining positions with Council in closed session without public scrutiny. The Attorney General has opined that “[i]mplied exceptions to the Brown Act have been accepted where a literal application of the act would completely negate principles of law” Here, however, a literal

application of the law does not negate any long-standing legal principles. That a local agency can, and must, be allowed to discuss bargaining strategy with its designated representative is a long standing practice authorized by the Act and reiterated in the Attorney General's interpretation of the Act. Specifically, the Attorney General has said, "[t]he need to bargain in private and caucus in private in labor negotiations is clear. If section 53952.3¹ were interpreted as including bargaining committees (i.e., union representatives) the ability of local agencies to bargain effectively could be nullified." 61 Op. Cal. Att'y Gen. 1, 8 (1978). (emphasis in original). The Attorney General's opinion that no exemption to California Government Code section 54957.6 may be implied agrees with the City's historical practice of not permitting bargaining committees to meet with legislative bodies in closed sessions.

In an opinion issued in 1974, the Attorney General was asked whether an implied exemption to California Government Code section 54957.6 could be found if the legislative body chose not to appoint a designated representative for bargaining purposes, but rather, conducted the bargaining process itself. The board of supervisors requesting the opinion suggested that an implied exemption should be found because otherwise the board would be compelled to discuss the strengths and weaknesses of its bargaining position in open session, presumably in front of some members of the adversarial party. The board argued that failure to find an implied exemption would result in the anomalous situation where it would be allowed to meet in closed session with a designated representative, but not allowed to meet in closed session if it chose to perform the bargaining duties itself. The Attorney General responded that "[w]hile the anomaly is apparent, this office concludes that an implied exemption may not be found to prevent the public from attending sessions where strategy is discussed by a board which chooses not to designate a representative." 57 Op. Cal. Att'y Gen. 209, 210 (1974). If the Council were to agree to hear directly from the union representatives it would, in essence, be choosing not to appoint a designated representative. Following the logic of the Attorney General, any presentation by the union to the Council under such circumstances must be done in open session.

CONCLUSION

There is no exemption in the Act that would allow Council to hear from union bargaining committees in closed session. The closed session exemption in the Act is limited to meetings between the Council and its designated representative to develop strategies and consensus with respect to the City's bargaining position.

CASEY GWINN, City Attorney

/ S /

By

Sharon A. Marshall
Deputy City Attorney

SAM:vl
ML-2002-2