

MEMORANDUM OF LAW

DATE: December 31, 1985

TO: Rich Snapper, Personnel Director

FROM: City Attorney

SUBJECT: Change to Rule XI, Sec. 3(d) of the Rules of  
the Civil Service Commission

By memorandum dated November 21, 1985, you asked three questions concerning a proposed change to Civil Service Rule XI, Sec. 3(d) (Municipal Code Sec. 23.1203). Those questions were (1) what process is required to change the current Rule XI, Sec. 3(d) to reflect the proposed language; (2) is the proposed language acceptable as written; and (3) would the proposed language be enforceable if it were shortened to end after the word "lead person."

Rule XI, Sec. 3 reads in part:

Section 3. CAUSE FOR REMOVAL OR SUSPENSION:

The following are declared to be causes for

removal or suspension from the classified  
service of the City, though charges may be  
based on causes other than those enumerated:

...

...

...

(d) That the employee has violated any  
lawful or official regulation or order or  
failed to obey any lawful and reasonable  
direction given by a superior officer when  
such violation or failure to obey amounts to  
insubordination or serious breach of  
discipline which may reasonably be expected to  
result in lower morale in the organization or  
to result in loss, inconvenience, or injury to  
the City or the public.

Your proposed change to Rule XI, Sec. 3(d) reads as follows:

(d) That the employee has violated any  
lawful or official regulation or order or  
failed to obey any lawful and reasonable  
direction given by a superior officer,  
supervisor or lead person, when such violation

or failure to obey may result in loss,  
inconvenience, inefficiency, or injury to the  
City or the public.

In order to change Rule XI, Sec. 3(d) as proposed, The City of San Diego must meet and confer with all recognized employee organizations pursuant to the Meyers-Milias-Brown Act because Civil Service Rule XI, Sec. 3(d) pertains to terms and conditions of employment. *Vernon Firefighters v. City of Vernon*, 107 Cal.App.3d 802, 165 Cal.Rptr. 908 (1980).

The proposed language changes are acceptable with one minor exception. We would recommend the following change in the grammatical structure of the proposed language:

That the employee has violated any lawful or  
official regulation or order or failed to obey  
any lawful and reasonable direction given by a  
superior officer, supervisor or lead person  
when such violation or failure to obey results  
in (1) loss, inconvenience or injury to the  
City or the public or (2) causes inefficient  
job performance by the employee.

Shortening Sec. 3(d) by ending it after the word "lead person" would make the rule subject to much wider interpretation, however we do not believe that the striking of such language will

cause the rule to become unconstitutionally vague. However, the current and the proposed language serve a useful purpose by narrowing the scope of the rule to serious violations. We would therefore recommend that the descriptive language remain in Civil Service Rule XI, Sec. 3(d).

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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