

RECLASSIFIED AND PUBLISHED

May 6, 1988

DATE: March 18, 1987

TO: Bruce Herring, Labor Relations Assistant via
Jack McGrory, Deputy City Manager
FROM: City Attorney
SUBJECT: Representation of Employees by Recognized
Employee Organizations

You have recently asked this office if it is lawful for a recognized employee organization to deny representation to a City of San Diego employee who is a member of an appropriate unit as that term is defined in Council Policy 300-6 but not a dues paying member of that recognized employee organization. You were particularly concerned about such denial of representation during special salary requests before the Civil Service Commission and in disciplinary proceedings.

Generally, The City of San Diego should not be concerned with an action by a recognized employee organization that involves its duty of fair representation to the employees of its appropriate units. Under normal circumstances, that is a matter between the employee and the recognized employee organization. However, we do believe it necessary to respond to your concerns in general because the issue of representation of City employees on matters within the scope of representation as set forth in the City's Employee-Employer Relations Policy Council Policy 300-6, has already been the subject of one lawsuit. In *Bronold et al. v. Civil Service Commission of The City of San Diego, et al.*, San Diego County Superior Court No. 516673, a recognized employee organization attempted unsuccessfully to compel the Civil Service Commission to permit it to represent employees belonging to an appropriate unit which was "exclusively" represented by another recognized employee organization. Although The City of San Diego was successful in defending the rules of employee representation outlined in Council Policy 300-6, confusion still exists as to the nature and scope of employee representation under that Council Policy, the Meyers-Milias-Brown Act Gov't Code Sec. 3500

et seq. and the provisions of the memoranda of understanding between The City of San Diego and the recognized employee groups.

It is undisputed that a recognized employee organization has the exclusive right to represent the appropriate unit on matters within the scope of representation such as the meet and confer process. It is also clear that each employee in the unit is free to reject such representation and represent himself or herself in

that process as an individual. *Andrews v. Board of Supervisors*, 134 Cal.App.3d 274, 184 Cal.Rptr. 542 (1982).

The City of San Diego's Council Policy 300-6 "Employer-Employee Relations," adopted pursuant to Cal. Gov't Code Sec. 3503, sets forth clear guidance on this topic. In paragraph III, it states:

Except as otherwise provided or authorized by law, employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation in accordance with this resolution. Employees of the City shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his or her exercise of these rights.

Although there is not a wealth of case law on this subject, the court in *Andrews*, relying on the wording of a local policy similar to Council Policy 300-6, held that the recognized employee organization represents all unit employees and not just its members on matters within the scope of representation. The court went on, however, to indicate that because individuals are free to represent themselves pursuant to Gov't Code Sec. 3506 and the terms of the policy in question there could be no reciprocal duty of fair representation by the employee organization because "exclusive representation" within the true sense of that term did not exist under the policy. On the other hand, a recognized employee organization may, if it desires, represent nonmembers in its appropriate units on matters within the scope of representation and bring suit on their behalf.

Anaheim Elementary Ed. Assn. v. Board of Education, 179 Cal.App.3d 1153, 225 Cal.Rptr. 468 (1986).

In the area of disciplinary matters and grievance procedures, the rules are slightly different. At a minimum, any employee facing discipline has the right to be represented by an attorney or by the recognized employee organization during disciplinary proceedings. *Steen v. Board of Civil Service Commrs.*, 26 Cal.2d 716, 727, 160 P.2d 816 (1945); *Civil Service Assn. v. City and*

County of San Francisco, 22 Cal.3d 552, 150 Cal.Rptr. 129, 586 P.2d 162 (1978). Council Policy 300-6 does not address representation rights during disciplinary or grievance procedures; therefore, we must look to the provisions of the various memoranda of understanding to determine the complete scope of an employee's right of representation during these procedures. Unfortunately, most of the current provisions in the various memoranda of understanding, describing the employees right to representation, are vague as to the specific identity of the representative. It can be argued that the language of these provisions grants employees the right to be represented not only by the attorney of their choice, but by any representative whether or not the representative is associated with the recognized employee organization. That being the case, there is no duty by the recognized employee organization to represent appropriate unit nonmembers in disciplinary proceedings because the employee may exercise his or her right to obtain other representation. The lone exception to this rule is found in Article 10 of the Memorandum of Understanding between the City and Local 127 of the American Federation of State, County and Municipal Employees, AFL-CIO. That article guarantees representation by Local 127 to any employee in the Maintenance and Labor Unit or the Skilled Trades and Equipment Operator Unit during a grievance procedure.

In summary, the right to representation currently enjoyed by employees of The City of San Diego is very broad. We therefore stand ready to answer any future questions concerning this complex matter as they develop.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm

360:(x350):(x043.2)

ML-87-23