

MEMORANDUM OF LAW

DATE: February 29, 1988

TO: Bruce Herring, Labor Relations Manager

FROM: City Attorney

SUBJECT: Selection of Benefit Providers

In a memorandum dated February 17, 1988, you asked this office if it is legally appropriate for The City of San Diego to negotiate specific benefit providers for City employees through the meet and confer process without using a competitive bidding process. You specifically indicated that concerns have been raised over the inclusion of the Sharp Memorial Hospital Health Management Program into The City of San Diego's current Memorandum of Understanding (MOU) with Local 145 of the International Associations of Firefighters. This benefit was originally incorporated into the MOU with Local 145 four years ago and has been approved by the City Council for inclusion in each of the MOUs with Local 145 ratified since that time. It has never been the subject of a competitive bidding procedure.

Initially, it should be noted that nothing in the Charter of The City of San Diego, the San Diego Municipal Code, Council Policy or the City's Administrative Regulations requires or prohibits competitive bidding under the limited and narrow circumstances you describe. However, changes in the type or nature of employee benefits provided by the City of San Diego to its employees are subject to the meet and confer process described in both the Meyers-Milias-Brown Act Gov't Code . 3500 et seq. and Council Policy No. 300-6.

A competitive bidding procedure is normally required when The City of San Diego will be the beneficiary of the contract (see Charter . 94 for public works contracts, San Diego Charter . 35 for equipment and insurance required by the various departments or offices of the City, Council Policy No. 330-7 and Administrative Regulation 25.70 for consultant services contracts). On the other hand, employee benefits, including medical and dental health care, are considered part of the employee's general compensation and are thereby subject not only

to the meet and confer process but also to the procedures set forth in Charter . 70, Power to Fix Salaries and Charter . 130, Compensation.

Traditionally, The City of San Diego's Management Team has been authorized by the City Council to negotiate the nature and scope of employee benefit programs directly with the exclusively

recognized employee organization. The reason for this is that the employees, and not the City, are the actual beneficiaries of these benefit programs. This method has given City employees, through their recognized employee organizations, a direct influence over the selection process of the benefit providers. There is, however, no legal reason why such benefit programs may not be subject to a competitive bidding process prior to being offered to the employee groups. However, if the City Council or the City Manager desires to subject employee benefit programs to a competitive bidding procedure, they may do so only prospectively because The City of San Diego is bound to provide benefits contained in a ratified memorandum of understanding. *Glendale City Employees Assn. Inc. v. City of Glendale*, 15 Cal.3d 328 (1975).

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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