MEMORANDUM OF LAW
RECLASSIFIED & PUBLISHED February 2, 1988
DATE: January 12, 1988

TO: Bruce Herring, Labor Relations Manager
FROM: City Attorney
SUBJECT: Timeliness of the Municipal Employees Association's Decertification/Recognition Petition

In a memorandum dated December 23, 1987, you asked this office if the proposed Municipal Employees Association ("MEA") Decertification/Recognition Petition is timely pursuant to the provisions of Council Policy 300-6, entitled "Employer-Employee Relations." Attached to your memorandum was a copy of a December 11, 1987 memorandum to City Councilmember Ron Roberts from MEA advocating that the City Council declare MEA's proposed Decertification/Recognition Petition as "timely" under Council Policy 300-6, section V-E despite the "premature" extension of Local 127's Memorandum of Understanding (MOU) for a third year. From the contents of that memorandum, it appears that MEA intends to file a Decertification/Recognition Petition with your office during the month of January 1988 in an attempt to become the exclusively recognized employee organization for certain classes of City employees who are currently represented by Local 127 - American Federation of State, County and Municipal Employees (AFL-CIO).

Council Policy 300-6 sets forth the procedures for decertifying an exclusively recognized employee organization. At issue in MEA's memorandum is the interpretation to be given to the following language contained in section V-E of that policy.

> A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents the employees in an established appropriate unit may be filed with the City Manager following
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> the first full year of recognition under this revised policy, (only during the month of January of any year) or during the thirty (30) day period commencing one hundred eighty (180) days prior to the termination date of a Memorandum of Understanding, whichever is later. Emphasis added.

As you are aware, both MEA and Local 127 are exclusively

recognized employee organizations and each has a current MOU with The City of San Diego. MEA's MOU expires midnight June 30, 1988 pursuant to Council Resolution No. R-268318. Local 127's MOU does not expire until June 30, 1989 because its previous two-year contract which originally was to expire on June 30, 1988 was extended for a third year by Resolution No. R-269017 on August 3, 1987. Multiple year MOUs are authorized by Charter . 11.2 which became effective on September 8, 1986. It states:

> SEC. 11.2 LEGISLATIVE POWER -- MEMORANDUM OF UNDERSTANDING.
>
> Notwithstanding any provisions of this Charter to the contrary, nothing in the Charter shall be construed to preclude the Council from entering into a multiple year memorandum of understanding with any recognized City employee organization concerning wages, hours and other terms and conditions of employment if, in the prudent exercise of legislative discretion as provided in this Charter, the Council determines it is in the best interests of the City to do so; and further provided that said exercise of legislative discretion is expressed affirmatively by a two-thirds vote of the entire Council.

By the plain language contained in section V-E of Council Policy 300-6, Local 127's extension of its MOU for a third year delayed the period for the timely filing of a Decertification Petition for the units it represents from January 1988 to January 1989.

MEA believes that such delay is inappropriate. Its position, as articulated in the December 11, 1987 memorandum, is that:

> Any interpretation or application of Council Policy 300-6, section V, E, which declares a Decertification/ Recognition Petition filed in January 1988 to be "untimely" due to the "premature" negotiations of 1988-89 M.O.U. with Local 127 will violate the express provisions of the Meyers-Milias-Brown Act, Government Code .. 3500 et seq.

In addition, MEA believes that:

> Any local policy or ordinance which purports to limit the right of employees to change their bargaining representative at any time other than during the "protected" or "insulated" 12-month period, violates and

> frustrates the policies and purposes of M.M.B.A. which promotes the employees "rights to free association."

In support of its position, MEA cites Service Employees Internat. Union v. City of Santa Barbara, 125 Cal.App.3d 459 (1981) and California Gov't Code . 3507 which states in part:

> Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than twelve months following the date of such recognition. No public agency shall unreasonably withhold recognition of employee organizations.

In Service Employees Internat. Union v. City of Santa Barbara, the court refused to adopt the doctrine of "contract bar" absent a directive from the California Legislature. The "contract bar" doctrine was developed by the National Labor Relations Board as an administrative policy designed to "protect the bargaining atmosphere." Pioneer Inn Associates v. N.L.R.B., 578 F.2d 835, 838 (9th Cir. 1978). It prevents the conduct of a decertification election during the life of a valid collective bargaining contract which, under federal law, may be of up to three years duration. General Cable Corp, 139 N.L.R.B. 1123 (1962). The court in Service Internat. Union v. City of Santa

Barbara reasoned that if it adopted the "contract bar" language doctrine in the face of the clear language of California Gov't Code . 3507 it would in effect supersede the right of public employees to vote on the question of majority of representation every twelve months. The court stated that if the California Legislature wanted a three-year contract to act as a bar to a representative election for local governmental employees, it would have placed in the Meyers-Milias-Brown Act similar language to that found in California Gov't Code . 3544.1 relating to public school employees which incorporates the "contract bar" doctrine without limitations to term, California Gov't Code . 3574 which establishes a three-year "contract bar" doctrine for higher education employees, or Public Utilities Code . 125521 which provides for a two-year "contract bar" for covered employees.

We are faced with different facts. Unlike the city of Santa Barbara, The City of San Diego has agreed with both competing employee organizations in their respective MOUs to the procedures set forth in Council Policy 300-6. MEA argues that this creates

a "contract bar." However, the "bar" prohibiting the filing of a decertification petition under the present facts is not the duration of Local 127's MOU but the explicit provision of Council Policy 300-6 which has been agreed to by both MEA and Local 127. MEA now insists that the City ignore that which it (MEA) expressly contracted for with the City in the current MOU, essentially and effectively requesting the agreement be, in part, abrogated. Article 9 of the current MOU with MEA and Article 27 of the current MOU with Local 127 both contain the following language in the first paragraph:

> The following Personnel Manual sections, Administrative Regulations, and other official regulations shall be included in this Memorandum as if fully set out at this point. The provisions of such documents which affect wages, hours and other terms and conditions of employment which would otherwise be subject to meet and confer, shall not be changed during the term of this agreement.

Listed in both paragraphs is "Employer-Employee Relations Policy 300-6." It is therefore clear that both MEA and Local 127 have agreed for the duration of their respective MOUs with the

City to the procedures set forth in Council Policy 300-6. In fact, Council Policy 300-6 has been adopted by reference in every MOU with MEA since 1983 and in every MOU with Local 127 since 1984. We must therefore consider the effect these MOU provisions have on MEA's request to The City of San Diego to declare the proposed petition to be timely despite the specific language contained in Council Policy 300-6.

In holding that the language of a memorandum of understanding to be "indubitably binding" upon the city of Glendale after it was ratified by the Glendale city council, the California Supreme Court stated the following:

> Why negotiate an agreement if either party can disregard its provisions? What point would there be in reducing it to writing, if the terms of the contract were of no legal consequence? Why submit the agreement to the governing body for determination, if its approval were without significance? What integrity would be left in government if government itself could attack the integrity of its own agreement? The procedure established by the act would be meaningless if the end-product, a

> labor-management agreement ratified by the governing body of the agency, were a document that was itself meaningless.

Glendale City Employees Assn. Inc. v. City of Glendale, 15 Cal.3d 328 (1975).

The converse is also true as the court in Crowley v. City and County of San Francisco, 64 Cal.App.3d 450 (1976) stated: "While the municipal government must live up to the bargain it has made, it is entitled to the expectation that the employees' association will do the same."

In light of the above, MEA's request to the City Council to "interpret" the plain language of Council Policy 300-6 to authorize the filing of a decertification election more than 180 days prior to the termination of Local 127's MOU is in fact a request by MEA for the City to waive the timing restrictions of Council Policy 300-6 which are incorporated in our Article 9 of MEA's MOU and at the same time breach the corresponding provision in Article 27 of the City's current MOU with Local 127.

We are unaware of any legal authority supporting such action. To the contrary, the purpose of the Meyers-Milias-Brown Act is to encourage public agencies to adopt reasonable rules and regulations after consulting in good faith with representatives among employee organizations for the administration of employee and employer relations. Los Angeles Firefighters Local 1014 v. City of Monrovia, 24 Cal.App.3d 289 (1972). This the City has done. It should be noted at this point that MEA made no demand during the last meet and confer session (April to May 1987) for any modification of the terms of Council Policy 300-6. The courts have also indicated that the Meyers-Milias-Brown Act is designed to permit as much flexibility in employee-employer relations with regard to all aspects of the employer-employee milieu as a voluntary system will permit. San Joaquin County Employees Assn., Inc. v. County of San Joaquin, 39 Cal.App.3d 83 (1974). Care should also be taken in interpreting MOUs and every effort should be made to give full effect to the actual understanding of the parties so as to uphold the integrity of the agreement. Chula Vista Police Officers, Assn. v. Cole, 107 Cal.App.3d 242 (1980).

If MEA is concerned over the impact that multi-year contracts, adopted pursuant to the authority contained in Charter . 11.2, have on the decertification procedures set forth in Council Policy 300-6 or that Council Policy 300-6 is unreasonable in any manner, these concerns should properly be brought to the City's attention through the meet and confer process. At the present time, however, The City of San Diego should abide by the

express provisions of Council Policy 300-6 as incorporated into Local 127's and MEA's MOUs and thereby remain neutral in this issue concerning the timeliness of the decertification petition.

In summary, while we believe that MEA may be correct in stating that perpetual back-to-back extensions of a MOU will eventually defeat the free choice of employees to select their representatives and thereby be contrary to the express provisions of California Gov't Code . 3507, we do not believe that to be the present situation. Both MEA and Local 127 have long agreed in their respective MOUs to the procedures set forth in Council Policy 300-6 for the conduct of decertification elections and the filing of decertification petitions. If either MEA or Local 127 desires a change in the filing procedures for decertification or recognition petitions under Council Policy 300-6, they should bring such proposals forward during the impending meet and confer process. In the meantime, The City of San Diego should honor its

MOUs with both MEA and Local 127 by denying MEA's petition as being untimely under the clear language contained in Council Policy 300-6.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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