

MEMORANDUM OF LAW

DATE: December 23, 1992

TO: Larry Gardner, Labor Relations Manager

FROM: City Attorney

SUBJECT: Council Policy 300-6 Decertification

BACKGROUND

In a memorandum dated December 3, 1992, you have indicated that the decertification process for an existing union and a petition for the right of exclusive representation by another union may occur in the near future. In preparation for the impending decertification process, you have asked a number of procedural questions.

The City's labor management relations are guided by the Meyers-Milias-Brown Act ("MMBA"), Government Code sections 3500 et seq. The MMBA grants broad authority to public employees to organize, to have representation and to meet and confer on matters involving wages, hours and working conditions. However, the MMBA is unique among the state's bargaining laws because it permits each local employer to draw up its own rules and regulations governing employment relations. Specifically, Government Code section 3500 provides in pertinent part:

Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other

methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

The MMBA does not address the specifics of how the decertification and election process is conducted. Thus, as directed by Government Code section 3500, the City must refer to its local rules for guidance.

The following responds to your questions:

Question No. 1      When can the signature cards start being collected for the petition?

Answer: Council Policy 300-6 section IV h(2) specifies that only recently signed authorization cards may be verified for a petition. "Recently signed" is defined as a signature that is signed and dated within ninety (90) days of the filing of the petition. Therefore, depending upon when the petition is to be filed with the City Manager, signatures may be collected only in the preceding ninety (90) days. With the recent amendments in Council Policy 300-6, challenging organizations must present verified signatures of at least fifty (50%) percent of the individuals in the class. This includes all individuals in the represented class, not only those individuals who are dues paying members of the currently recognized employee organization.

Question No. 2      When must the cards be presented to the City Manager?

Answer: Pursuant to Council Policy 300-6 section V A(10), signature cards are to be filed with the petition.

Question No. 3      When must the election be held?

Council Policy 300-6 does not give a specific date within which the election should be held. However, the election should be held as soon as is practicable after the filing of the petition. There are, however, certain waiting periods that must be observed. Council Policy 300-6 section V B(2) provides that after the City Manager has accepted receipt of the petition, he shall notify the previously recognized employee organization and the employees in the unit. The section further provides that no action on the petition shall be taken for thirty (30) days. During this thirty (30) day period, any other employee organization may file a petition for recognition. Should the petitions of challenging organizations need to be amended, the organizations shall have fifteen (15) days from notice of the need to amend to make any necessary changes.

These two time limits are the only restrictions placed on the timing of the election. Once the periods have fully run, the

election may be held at any time.

Question No. 4      What role will the State  
Conciliation Service play in the  
process?

The State Conciliation Service need not play any role in the election process. However, pursuant to Council Policy 300-6 section V D, the State Conciliation Service shall conduct the election should the parties be unable to agree on a neutral third party to conduct the election.

Question No. 5      What ground rules must be  
established regarding the  
collection of signatures and voting  
process?

Council Policy 300-6 provides only very general guidelines as to the conduct of the election. However, at Section VI D, the policy provides that: "The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations."

Based upon this section, it would appear that the City Manager should meet with the employee organizations to determine when and how the election should be conducted. The City has procedures in place for the conduct of employee organizations. It is suggested that those procedures be utilized in this election.

The one function that separates this from the usual employee organization election is the signature collection aspect. That aspect is specifically addressed in Council Policy 300-6 section VI C. That section provides:

Access to City work locations  
and the use of City-paid time,  
facilities, equipment and other  
resources by employee organizations  
and those representing them shall be  
authorized only to the extent  
provided for in an unexpired  
Memorandum of Understanding and/or  
administrative procedures, and shall  
be limited to activities pertaining  
directly to the employer/employee  
relationship and not such internal  
employee organization business as  
soliciting membership, campaigning  
for office, and organization meetings  
and elections, and shall not  
interfere with the efficiency, safety

and security of City operations.

This language is supported by the Memoranda of Understanding with the City's recognized employee organizations which provide that employee representatives may have access to work locations for purposes of conducting grievance investigations and observing working conditions. No provisions are made to provide access to work sites for purposes of obtaining signatures for decertification or recognition petitions.

The election procedure should follow the same secret ballot procedure that is employed for other elections. Council Policy 300-6 V D provides that the ballot shall include a choice of "no organization." Finally, Council Policy 300-6 section V D provides that the cost of the election shall be borne in equal shares by the City and each of the employee organizations appearing on the ballot.

If you have any further questions or need additional clarification, please feel free to contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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