

MEMORANDUM OF LAW

DATE: December 14, 1994

TO: Bill Lopez, Labor Relations Assistant

FROM: City Attorney

SUBJECT: Reallocation of a Group of Reservoir Keepers from
Local 127 to San Diego Municipal Employees'
Association

QUESTION PRESENTED

You have asked that I respond to two questions regarding the designation of employees to recognized bargaining units within the City. The first is whether a group of employees currently represented by AFSCME Local 127 ("Local 127"), which represents the maintenance, skilled trades and equipment operator units, are in the appropriate bargaining unit now that they are performing duties requiring higher levels of responsibility. Additionally, you have asked if the reallocation of employees from one bargaining unit to another bargaining unit in the middle of the Memorandum of Understanding ("MOU") year is permissible.

BACKGROUND

Reservoir Keepers for the City have historically been represented by Local 127 because their duties were in the nature of a skilled trade. However, in March of 1994, prompted by a request from Local 127, the Personnel Department conducted a salary study of Reservoir Keepers. The results of the study concluded the duties of the Reservoir Keepers had expanded significantly. This greater range of duties includes closer supervision of Assistant Reservoir Keepers and Lake Personnel. Additionally, a number of completely new duties were noted by the Personnel Department. Specifically, the report to the Civil Service Commission ("Commission") stated:

The Reservoir Keepers will have a new duty of leading the Assistant Reservoir Keepers in the development of nature walks and other interpretive programs on the natural and historical features of their respective lakes or reservoirs. This will include designing and preparing exhibits and

publication materials, as well as providing information to the public regarding the facilities. Lastly, the Reservoir Keepers will be the primary contact with schools and community groups and independently act as the representative of the Water Utilities Department at community meetings when the lakes or reservoirs are topics at issue.

Based upon the findings of the study, a salary increase for Reservoir Keepers was recommended to, and approved by, the Commission. The Commission's recommendation was subsequently approved by the City Council in the salary ordinance.

Subsequent to the results of the salary study being issued, Reservoir Keepers approached the Manager's office with a request that they be transferred from the Local 127 bargaining unit to the San Diego Municipal Employees' Association ("MEA") pursuant to the recognition by the Personnel Department of the increase in the scope and responsibility of their duties. MEA represents the administrative and field support, technical, professional and supervisory units. The request for transfer was not received until after the Fiscal Year 1995 meet and confer process was complete and the MOU's and operating procedures of the four unions had been ratified by City Council.

SHORT ANSWER

Although a reallocation of Reservoir Keepers to a different bargaining unit could be deemed reasonable and appropriate based upon the duties of the Reservoir Keepers, the request for reallocation is not timely and should not be considered at this time.

ANALYSIS

I. Appropriateness of the Bargaining Unit

The sole standard by which a public entity is governed in determining whether a bargaining unit is appropriate "is whether such a determination is reasonable." *Reinbold v. City of Santa Monica*, 63 Cal. App. 3d 433, 440 (1976). "The criteria for determining an appropriate unit may include, but should not be limited to, such factors as community of interest among the employees, history of representation, and the general field of work." *Id.* As shown by the results of the salary study, the general field of work and community of interest between Reservoir Keepers and Assistant Reservoir Keepers is minimal. The report to the Commission indicated Reservoir Keepers are "responsible for the operation, maintenance and safeguarding of a dam, reservoir and the surrounding area," while Assistant Reservoir

Keepers "perform a variety of semi-skilled maintenance and report work; sell and check boat and fishing permits; patrol their assigned areas against trespassers; and lead the work of the Lake Aides." The Personnel Department job descriptions make clear the fact that Reservoir Keepers are supervisory/management employees while Assistant Reservoir Keepers perform basic maintenance and upkeep duties. The courts have noted that, in certain circumstances, merging employees who have managerial duties into one bargaining unit with employees who do not, can be inappropriate. Factors to be considered include, but are not limited to:

The existence of actual or potential conflicts of interest where management employee's loyalties may be split between the employers' interests and those of employees; history of collective bargaining; the greater responsibility of management employees for the efficient functioning of a department constitutes a community of interest not necessarily shared by rank-and-file employees.

Organization of Deputy Sheriffs v. County of San Mateo, 48 Cal. App. 3d 331, 339 (1975).

While Reservoir Keepers and Assistant Reservoir Keepers share a history of collective bargaining, the recent changes in job duties noted in the salary study warrant a review of the current designation of bargaining units. The courts have also indicated that the desire of employees is also a factor to be considered in the selection of an appropriate bargaining unit. *San Bernardino County Sheriff's Etc. Assn. v. Board of Supervisors*, 7 Cal. App. 4th 602, 615, reh'g denied (1992). In this instance, the Reservoir Keepers personally approached the Labor Relations Manager to request the change. Their request makes clear their belief that, as supervisors, they do not share a community of interest with employees traditionally represented by Local 127.

II. Timeliness of the Request

Using the court's standard of reasonableness for guidance, granting the request by Reservoir Keepers to be moved to a different bargaining unit based upon increased job duties and responsibilities would be appropriate. However, the request is not timely. The Meyers-Milius-Brown Act ("MMBA"), Govt. Code Sections 3500-3510, empowers a city to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of

employer-employee relations. Cal. Govt. Code Section 3507. Pursuant to that authority, The City of San Diego has adopted Council Policy 300-06 which addresses employer-employee relations. This Council Policy mandates that requests by employee organizations for modifications of established bargaining units may be considered by the City Manager only in two circumstances. Those circumstances are: "following 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 an existing Memorandum of Understanding, whichever is later." Council Policy 300-06(E).F

Note, however, that the City Manager may request that Council Policy 300-06 be waived for purposes of this request.

The existing MOU with MEA and

operating procedures with Local 127 do not expire until June 30, 1995. Consequently, since the enclosed request, dated July 27, 1994, is not in compliance with Council Policy 300-06, the request is not timely and should not be considered until the next meet and confer period for Fiscal Year 1996.

III. Meet and Confer Requirements

The time constraints of Council Policy 300-06 should not be read to mandate meet and confer on the issue of bargaining unit designation. It is not entirely clear whether a reallocation of persons from an existing bargaining unit to a different unit is within the meet and confer requirements of the MMBA. In *Service Employees Internat. Union v. City of Santa Barbara*, 125 Cal. App. 3d 459 (1981), the City of Santa Barbara, pursuant to Government Code section 3507, previously had adopted rules and regulations which addressed the designation of appropriate employee units. The court held that a public agency must meet and confer with recognized employee representatives prior to adopting such rules and regulations. *Id.* at 469. However, once the rules have been adopted, the public agency need not meet and confer when determining whether an individual proposed bargaining unit is appropriate. *Id.* San Diego has similarly adopted rules and regulations which address designating bargaining units. See Council Policy 300-06(F). Thus, the City does not need to confer with the existing bargaining unit when applying the Council Policy to allow for a new bargaining unit. However, because Reservoir Keepers are named as a unit represented by Local 127 in the current operating procedures, which remain in effect, the time constraints prevent the City from making the change at this time.

However, Council Policy 300-06 may not be read in isolation for, while meet and confer is not required on the change standing

alone, other factors must be considered. The diminution of Local 127's strength due to reallocation of employees to another bargaining unit may make the proposed change a matter for meet and confer. For example, in *Building Material & Construction Teamsters' Union v. Farrell*, 41 Cal. 3d 651 (1986), the employer terminated employment positions and reassigned work outside the bargaining unit. In reviewing this action, the California Supreme Court noted that a diminution of bargaining unit positions was a compelling reason for requiring the employer to meet and confer before taking any action which would lead to such a result. *Id.* at 661. Although the reallocation proposed by the Reservoir Keepers would not involve a reallocation of work, it would involve a reallocation of positions from Local 127 to MEA. The consequence of this reallocation, as in *Building Material*, would be a decrease in the size of the existing bargaining unit. Therefore, before taking this action, the City should meet and confer with Local 127 regarding the consequences of the action. Finally, although probably not required by law, the City should also meet and confer with MEA on the impact the change would have on its bargaining ability.

CONCLUSION

There is no legal prohibition which precludes the City Manager from moving Reservoir Keepers from the Local 127 bargaining unit to the MEA bargaining unit. However, pursuant to Council Policy 300-06, the change may not be made during the term of the current contracts. Finally, although the City need not meet and confer on the change itself, it must meet and confer on the impacts of that change.

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By

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cc Rich Snapper

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