

MEMORANDUM OF LAW

DATE: March 1, 1996

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: 29th Police Academy Pay Issue

By letter dated February 9, 1996, Dick Castle, General Counsel for the Police Officers Association ("POA") requested that you place the POA grievance regarding the disputed pay rate for members of the 29th Police Academy on the Council docket per Step 6 of the grievance article. We have reviewed the dispute and find that salary disputes are not subject to the grievance procedure. Our analysis follows.

BACKGROUND

At the 29th Police Academy orientation a fact sheet of general information was distributed to recruits. The sheet indicated recruits

would be advanced to "B step" on the salary scale upon graduation from the Academy. This information was erroneous because through the meet and confer process with POA, the "B step" had previously been eliminated. This agreement was subsequently codified in the salary ordinance adopted by Council.

POA filed a grievance for members of the 29th Academy regarding the disputed elimination of "B step." The Labor Relations Office reviewed the dispute, determined an error had been made by releasing the erroneous information, and recommended a settlement in the form of discretionary time off. POA insists this is an insufficient remedy and

requests a salary adjustment. For this reason, they have invoked the right to a Step 6 hearing before Council.

ANALYSIS

The grievance procedure is found in Article 24 of the Memorandum of Understanding ("MOU") with POA. It provides at section II(a):

A grievance is a claim or charge of misunderstanding, or difference in interpretation, or violation of provisions of the Civil Service Rules, the Personnel Manual, this Memorandum of Understanding, or management policy or regulations including but not limited to Administrative and Departmental Regulations, which affect wages, hours or other terms and conditions of employment.

This section limits the scope of grievable subjects. Issues of disagreement that fall outside the parameters of the definition must be resolved in other forums.

Salary disputes are an example of issues that are not grievable. It is well settled that "The fixing of compensation for public

employees is a legislative function." Alameda County Employees' Ass'n v. County of Alameda, 30 Cal. App. 3d 518, 531 (1973). As such, salary disputes cannot be resolved through the grievance process. The San Diego City Charter complies with case law by providing in Charter section 70, entitled "Power to Fix Salaries," that recommendations for salaries and wages by the City Manager or other department heads be adopted by Council in the Salary Ordinance. Charter section 70 also provides that salaries may be adjusted mid-year only under certain limited circumstances. Thus, by law, the remedy sought by POA cannot be provided.

In light of the clear provisions that setting of salaries is a legislative function, this issue should have been determined to be not amenable to the grievance process. POA has a remedy at law of which it may avail itself. No management or Council action can justifiably be taken at this time.

JOHN W. WITT, City Attorney

By
Sharon A. Marshall
Deputy City Attorney

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