

MEMORANDUM OF LAW

DATE: June 27, 1996

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Fire Captain Promotions

QUESTION PRESENTED

Must the City of San Diego ("City") meet and confer with Local 145, Intern of Fire Fighters (Local 145") regarding the minimum qualifications for prom

SHORT ANSWER

No. The City need not meet and confer on either the promotional process o qualifications required for promotion. However, the Memorandum of Understa Local 145 requires that the City meet and confer on the impact any changes may have on the members of Local 145.

BACKGROUND

Historically, the promotional process in the Fire Department has been from

Engineer to Fire Captain. The Fire Chief has proposed that future promotion not require actual time in the Fire Engineer classification if an applicant has sufficient knowledge of engineer processes. Specific requirements which will demonstrate knowledge of engineer processes will be promulgated by the department to ensure consistency. The proposal would allow Fire Fighters to promote directly to the Captain classification if the applicant has requisite knowledge, sufficient time as a Fire Fighter, and meets all other

Local 145, the Fire Fighters union, has objected to the proposal and indicated

that the issue must be met and conferred on prior to any changes in the promotional process. Counsel for Local 145 has submitted a letter in which he articulates the basic principle that the promotional process is a meet and confer issue. This memorandum will address the concerns raised by the attorney in a seriatim fashion.

ANALYSIS

Counsel for Local 145 asserts that the case of *San Francisco Fire Fighters Association v. City of San Francisco*, 3 Cal. App. 4th 1482 (1992), stands for the proposition that

an employer must meet and confer with recognized bargaining units on all promotional issues. The fine line distinguishing management's responsibility to meet and confer on issues that affect "wages, hours, and other terms and conditions of employment" from promoting employees is a matter of degree. The court in *San Francisco Fire Fighters Local 798* at 1490.

In making the distinction, the court said:

even when the action of an employer has a significant and adverse effect on the wages, hours or working conditions of the employees, the employer may yet be excepted from the duty to bargain under the "merits, necessity, or organization" language of section 3504. Citation omitted. This occurs when the employer's action is a "fundamental managerial or policy decision" which falls outside the scope of representation.

Id. at 1491.

In the San Francisco Fire Fighters case, the court determined the city was and confer before changing its "'longstanding practice' of requesting immed vacancies whenever an eligibility list is about to expire." Id. at 1489. City proposal, the change had a direct impact on which Fire Fighters would The court explained that "the Fire Commission's decision changed the acce employees expected to be promoted. Consequently, there is no question the 'terms and conditions of employment.'" Id. at 1491. Nevertheless, the cou fundamentally a managerial decision and, therefore, it was not necessary th before implementing the change.

Similarly, the City maintains that the determination of minimum qualificat decision because it addresses the "merits, necessity, or organization" of t reinforced by the language of Article 16 of the MOU which provides that man exclusive right to "determine the procedures and standards of selection for . . ." Standards of selection refers to the qualifications needed by an em particular class. These qualifications may be changed by the Personnel Dir warrant new qualifications.

In his second paragraph, counsel states that the language of Article 16 re promotional examinations and procedures. He indicates that it does not ref Such an interpretation flies in the face of the plain language of the artic counsel asserts, have steps for the promotional process. The only defined the salary step system found within a single job classification. Salary st step and are indicative of the salary increases that may be achieved while single class. The steps referred to in Article 53 do not refer to promotio progress through to become a Captain. Rather, Article 53 indicates only th promotes to a Fire Fighter 2, he or she must promote to a salary step that (5%) percent increase in salary. This agreement was reached through the me ensures that a Fire Fighter 1 at E step who promotes to a Fire Fighter 2 wi ensures the Fire Fighter does not receive a pay cut but, rather, receives t

The steps indicated in the article do not, and have never, referred to clas go to the next class. Thus, the past practice referred to in Article 53 re

Counsel additionally cites Article 10(3) of the MOU as proof that the City on the promotional process. Specifically, counsel cites Article 10(3) with "The City will agree not to meet and confer with organizations other than L within the scope of representation including, but not limited to, hours, wa

hiring and promotional policies."
(Emphasis added by Local 145.)

By emphasizing the last portion of the sentence, counsel ignores the major which is found at the beginning of the sentence, "that the City will . . . organizations other than Local 145 . . ." (Emphasis added.) Clearly, th prohibit the City from meeting and conferring with other organizations rega Local 145. The City, pursuant to the MOU, has met and conferred on matters representation only with Local 145.

Counsel also asserts that Article 39 "dovetails" with Article 10 and prohi changing provisions of the agreement during its term. He goes on to state have been in place for twenty (20) years they cannot be unilaterally altere MOU indicates promotional steps must progress as counsel asserts, although usual progression has been Fire Fighter, Fire Engineer, Captain. Article 3 Article 10 only in the sense that both articles compel the City to meet and scope of representation before changes are made. Because standards of sele management, neither article applies to this issue.

Finally, in an attempt to leave no possible avenue unexplored, counsel cit and says that by implementing the changes in the promotional process, the C Charter, which requires that "whenever practicable, vacancies in the clas by promotion, and the Civil Service rules shall indicate the lines of promo higher grade, whenever experience derived in the lower grade tends to quali However, the proposed change will not eliminate the requirement that employ Fire Captain possess the necessary knowledge and skills and, indeed, promot which enabled them to learn those skills. Rather, the change will allow fo the skills to be gained through new avenues. A Fire Fighter may obtain the learned by an engineer on his or her own through personal initiative or by Engineer. Regardless of how the skills are learned, the qualifications wil proposed change is thus not prohibited by any Civil Service rule.

CONCLUSION

Standards for promotion are a right exclusively reserved to management in

MOU. As such, changes in the promotion process are not subject to the meet

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