

Meeting Minutes: Water Department discussion with Local 127 in regard to proposed General Requirements Contract 3:

Meeting date/ time/ place: February 23, 2005 / 1:30PM / 600 B Street, Suite 600

Deputy Director Vic Bienes provided some comments in regard to background to the meeting, and the Natural Resources & Culture committee's request via Council Member Madaffer that the Water Department consult with Local 127 and solicit comment whether or not Local 127 staff could do work performed by GRC contractor.

Attendee's: Ed Lehman, Business Agent; Al Edwards, Union 127 steward; Vic Bienes, Kelly Salt, Agnes Generoso, John Stohr, Jose Romo, Jr.,

Invited/ Unable to attend: Joan Raymond, President; Mike Mcghee, Chris Morris.

Local 127 comments:

Ed Lehman stated it's hard to comment when the tasks to be performed are To Be Determined in so much that GRC is an indefinite quantity, as-needed contract(or).

Ed commented that a few years ago, MWWD tried to contract out the sewer main cleaning/ televising. That work later turned into 200 jobs. Local 127 always thought those positions would eventually become permanent jobs. MWWD did hire City staff to do that work and those positions have become permanent.

Ed said according to a certain court case, and to his knowledge, City can only contract out work for certain reasons, including lack of staff, lack of staff expertise or lack of proper equipment. *Ed Lehman acknowledged that existing staff and equipment are limited.*

Ed stated that if the City made a decision to hire more staff and get the right equipment, that staff he represents in Local 127 may be able to perform portions of the work.

The discussion turned to specific GRC projects. One such project consists of procuring and installing pipeline tees that will connect new 8 inch reclaimed pipe onto an existing 48 inch transmission main in Black Mountain Road and will most likely be a night job... Al Edwards said the City has a metals fabrication shop at Police Dept... *WD staff contacted the Police fabrication shop and were told that they have a large volume of work just repairing police cars damaged on a daily basis and are unable to do additional fabrication work as Water may require from time to time, but that there is another fab. shop at Chollas. Staff contacted the equipment division repair garage at Chollas and were told that they have, on occasion, done some work on pump motor shafts... and that they would like to have right of first refusal.*

Another current GRC task is miscellaneous and ADA improvements to the Lower Otay Reservoir parking and recreation area. Al Edwards thought the City forces may be able to do some portions of the work like install the sidewalks, while he acknowledged that

the City does not have existing staff to remove and replace an entire parking lot and install the drainage improvements associated with that task. *The San Diego Municipal code section 22.3105 limits City Force work on CIP projects. This provision provides that City forces shall not be used on public works projects if the cost exceeds \$100,000 unless the City Council approves the use.*

Ed Lehman requested Local 127 be copied on GRC3 tasks. *The Water Department has agreed to provide a Quarterly update on the Departments progress to the NR&C Chairman. This information can also be provided to Local 127.*

Ed Lehman also stated that many times City Staff has repaired work done by contractors and could the City find a way to track the cost of those repairs?
The City already tracks the cost of City forces work done on CIP projects.

In response to the meeting minutes, City received the comments listed below:

“I got your fax. The notes don't really reflect our full sentiments. Several notes indicate that Local 127 acknowledges lack of staff. However, it is our contention that the lack of staff is usually the result of an improper Management decision. Lack of staff is not sufficient cause to support a decision to contract out bargaining unit work. The lack of staff could be cured in many cases by hiring the staff. That was the point we were trying to make about what happened at MWWD.
I also invite you to refer to the California Engineers case which established the criteria that public employers need to meet to legitimately contract out work belonging to a represented bargaining unit. Our suggestion to review the decisions on a task by task basis was only one way we think the Department could protect itself from an Unfair Labor Practice. Whether or not Local 127 is given such review, we would expect to be notified and we would expect the City to adhere to the California Engineers case criteria.
Thanks, Ed Lehman”

In response to Mr. Lehman's statements regarding the “California Engineer's” case, the City Attorney's office provided the Water Department a copy of a memorandum of law dated November 1, 2002, analyzing the *Professional Engineers in California Government v. Department of Transportation*, 15 Cal. 4th 543 (1997) case. The *Professional Engineers* case dealt with the issue of whether the state could contract out services that historically had been performed by state civil service employees. State civil service provisions are part of the California Constitution. The California Supreme Court determined that the state practice of contracting out such services was prohibited by the California Constitution.

The City Attorney's memorandum concludes that the Court did not extend its opinion to civil service systems generally, but rather limited its scope to the state system. Thus, the case is strictly binding on state civil service employees. The memorandum further concludes that as a charter city, the City of San Diego has plenary powers over its municipal affairs, subject to any City Charter restrictions. With limited exceptions, the City's ability to regulate its employees and enter into contracts for goods and services are

municipal affairs. The City Charter does not contain any restrictions on contracting out services. Consequently, the City's practice of contracting out certain services is not expressly prohibited by either the City Charter or the *Professional Engineers* case.