COUNCIL AGENDA: 01/13/09
ITEM: 3.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: 2009 Labor Negotiations

DATE: December 18, 2008

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

RECOMMENDATION

Accept staff report on Annual Summary of Upcoming Labor Negotiations.

OUTCOME

This report will provide the public an opportunity to have information related to negotiations in advance of the commencement of labor negotiations.

BACKGROUND

Pursuant to the Public Information provisions of the Sunshine Reform Task Force Phase 1 Report approved by the City Council on August 21, 2007, staff is to bring forward to the City Council in open session on an annual basis a summary of labor negotiations for the upcoming year. This is to provide an opportunity for the public to be informed about the City's labor negotiations before the City commences negotiations.

This memo provides a summary of background information related to labor negotiations, a summary of bargaining unit information for those bargaining units that the City will be in negotiations with in 2009, and a summary of 2009 labor negotiations cost saving strategies.

The City of San Jose has eleven Memoranda of Agreement (MOA), which are the contracts between the City and the bargaining units. The MOAs are available on the City's internet site at www.sanjoseca.gov/employeeRelations/moa.asp.

Bargaining Unit/Union	FTEs[1]	Contract Expiration
San Jose Police Officers' Association (POA)	1393	06/30/08
Operating Engineers, Local #3 (OE#3)	839	04/17/09
San Jose Fire Fighters, IAFF Local 230 (IAFF)	747	06/30/09
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42	218	06/30/09
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 43	56	06/30/09
Association of Maintenance Supervisory Personnel (AMSP)	102	06/30/09
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	84	12/10/09
International Brotherhood of Electrical Workers, Local 332 (IBEW)	84	03/06/10
City Association of Management Personnel (CAMP)	454	06/30/10
Municipal Employees' Federation, AFSCME Local 101 (MEF)	2456	06/30/11
Confidential Employees' Organization, AFSCME Local 101 (CEO)	226	09/17/11
TOTAL	**6659**	

The annual payroll cost for all employees in the City of San Jose is approximately $816 million for Fiscal Year 2008-2009. These costs include wages and benefits.

The cost of a 1% general wage increase is approximately $7.4 million annually, and of that, approximately $5.4 million is the General Fund cost.

In 2009, the City will be in negotiations/arbitration with the following seven bargaining units:

Bargaining Unit/Union	FTEs	Contract Expiration
San Jose Police Officers' Association (POA)	1393	06/30/08
Operating Engineers, Local #3 (OE#3)	839	04/17/09
San Jose Fire Fighters, IAFF Local 230 (IAFF)	747	06/30/09
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42	218	06/30/09
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 43	56	06/30/09
Association of Maintenance Supervisory Personnel (AMSP)	102	06/30/09
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	84	12/10/09
TOTAL	**3439**	

[1] Full Time Equivalents (FTE's) are the combined total number of budgeted full-time positions. For example, one full-time position equals one FTE. Similarly, two half-time positions equal one FTE.

In addition, the City is also in negotiations with seven bargaining units over the subject of retiree healthcare, and these negotiations are expected to continue into 2009.

ANALYSIS

Labor Negotiations Background

The City negotiates in accordance with various laws, regulations and City policies, as explained below.

Guiding Principles for Labor Negotiations

In June of 2007, the City Council approved guiding principles for labor negotiations, which aligned the approach to bargaining with the priorities established by both the Council and the community. The Guiding Principles for Labor Negotiations are attached.

Council Policy- Labor Negotiation Guidelines

In March of 2008, the City Council approved a Council Policy on Labor Negotiation Guidelines, which applies to the Mayor, members of the City Council and Mayor and Council Staff. The purpose of the policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that would circumvent the City's designated bargaining team. The Council Policy- Labor Negotiation Guidelines are attached.

Meyers-Milias-Brown Act (MMBA)

The MMBA governs the labor-management relations in California local government, including cities, counties, and most special districts. The MMBA sets guidelines for such things as the scope of representation and the requirement to meet and confer in good faith.

The MMBA states that the governing body of a public agency shall meet and confer in good faith regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations (i.e. unions/bargaining units). The MMBA defines meeting and conferring in good faith as having the mutual obligation to personally meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals and to endeavor to reach agreement on matters within the scope of representation.

The MMBA defines the scope of representation as all matters related to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

City of San Jose Employer-Employee Relations Resolution (#39367)

In addition to the MMBA, the City of San Jose has local rules that govern collective bargaining between the City and the recognized bargaining units that represent City employees.

Section 21 of Resolution #39367 designates the City Manager as the Municipal Employee Relations Officer. As such, the City Manager is the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment. Resolution #39367 also authorizes the City Manager to delegate these duties and responsibilities to an Employee Relations Officer or other members of his/her staff.

Negotiation Process

The Office of Employee Relations is delegated the authority by the City Manager to negotiate with each bargaining unit over wages, hours and working conditions. These negotiations commence prior to the expiration of an existing Memorandum of Agreement (MOA), approximately ninety days prior to the expiration. The City and the Union each establishes a negotiating team. Resolution #39367 provides for paid release time for up to three bargaining unit team members for time spent during the negotiation meetings that coincide with the employees' normal work hours.

During the negotiations, the City team meets with the union team to discuss various issues and interests for the new contract. The City's negotiating team is provided negotiation authorization by the City Manager and City Council. Proposals are exchanged related to the issues presented during the negotiations. Tentative agreements are often reached on individual issues as part of the negotiation process and ultimately, a tentative agreement is reached on the entire contract. All tentative agreements are contingent upon ratification of the union membership and approval of the City Council in open session.

If negotiations do not result in a tentative agreement on a new contract, Resolution #39367 states that impasse procedures may be invoked by either party and provides for mediation as the impasse procedure. If mediation assists the parties in reaching an agreement, it is still contingent upon ratification of the union membership and approval of the City Council in open session.

It is the goal of both parties to reach a negotiated agreement. However, the MMBA states that a public agency may, after impasse procedures have been exhausted, implement its last, best, and final offer. In addition, after mediation has been concluded and an agreement has not been reached on a new contract, the bargaining unit has the right to strike and/or engage in other protected concerted activity, except for police officers and firefighters who do not have the right to strike.

For the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, (IAFF, Local 230), if the parties fail to reach agreement after participating in mediation, City Charter Section 1111 provides for an Arbitration Board, comprised of a City representative, Union representative and a neutral arbitrator selected by the City representative and Union representative, to decide each issue by majority vote.

Pending Labor Negotiations

Retiree Healthcare Negotiations

Funding retiree healthcare is a significant financial challenge for both the City and employees. The estimated current unfunded liability for retiree healthcare benefits is estimated to be more than $1.4 billion. The retirement plan provides for the costs of retiree medical to be split 50/50 by the City and employees (approximately 75/25 for dental).

One measure of a retirement plan is its funded ratio and a plan is considered to be fully funded at 100%. As of the most recent actuarial reports, the funded ratio for retiree healthcare for the Federated plan is approximately 12%, and 5% for the Police and Fire plan. These figures demonstrate the retiree healthcare challenge.

The City has done a significant amount of work on the issue of retiree healthcare which formally began in August 2007 with a Council Memo and presentation to the Mayor and City Council. In addition, both retirement boards formed a Joint Committee on Solutions to Retiree Healthcare, and this Committee released a report in April 2008 with several recommendations on the issue of retiree healthcare.

During the last few years, the City obtained reopener clauses with seven bargaining units over the subject of retiree healthcare. Those bargaining units are as follows:

- International Brotherhood of Electrical Workers, Local 332 (IBEW)
- Confidential Employees' Organization, AFSCME Local 101 (CEO)
- Municipal Employees' Federation, AFSCME Local 101 (MEF)
- Association of Maintenance Supervisory Personnel (AMSP)
- City Association of Management Personnel (CAMP)
- Association of Building, Mechanical and Electrical Inspectors (ABMEI)
- Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42 and 43

The retiree healthcare negotiations with these bargaining units began in July of 2008 in a coalition setting and are expected to continue into early 2009. For OE#3 and IAFF, retiree healthcare negotiations will be a regular part of the 2009 negotiations and retiree healthcare is a subject of the pending negotiations/arbitration with the POA. Through these negotiations, we are working to explore various alternatives to creating a long-term sustainable model for retiree healthcare benefits.

San Jose Police Officers' Association (POA)

The City's contract with the POA expired on June 30, 2008. The POA represents approximately 1393 FTEs in the Police Department, from Police Recruits to Deputy Chiefs of Police. Impasse was declared and, as of the date of this memo, the City and POA are proceeding to binding interest arbitration under City Charter Section 1111.

An arbitrator will determine the pay and benefit changes for employee represented by the POA, which may have a significant financial impact on the City. Although arbitration is pending, it remains possible that the City and the POA can reach an agreement on a new contract.

2009 Labor Negotiations

During the next twelve months the following bargaining units will have contracts that expire and the City will be negotiating with them for a successor contract:

Operating Engineers, Local No. 3 (OE#3)

OE#3 represents approximately 839 Full Time Equivalents (FTEs), including the classifications of Maintenance Assistant, Park Ranger and Parking and Traffic Control Officer. OE#3's contract expires April 17, 2009 and negotiations with OE#3 are expected to begin in January 2009.

San Jose Fire Fighters, IAFF Local 230 (IAFF)

IAFF represents approximately 747 Full Time Equivalents (FTEs), from the classifications of Firefighter to Battalion Chief. IAFF's contract expires June 30, 2009 and negotiations with IAFF are expected to begin in January 2009.

Association of Engineers and Architects, IFPTE Local 21 (AEA)

AEA represents approximately 274 Full Time Equivalents (FTEs), including the classifications of Engineer, Architect, Senior Engineer and Senior Architect. AEA's contract expires June 30, 2009 and negotiations with AEA are expected to begin in March 2009.

Association of Maintenance Supervisory Personnel (AMSP)

AMSP represents approximately 102 Full Time Equivalents (FTEs), including the classifications of Building Maintenance Superintendent and Building Services Supervisor. AMSP's contract expires June 30, 2009 and negotiations with AMSP are expected to begin in May 2009.

Association of Building, Mechanical and Electrical Inspectors (ABMEI)

ABMEI represents approximately 84 Full Time Equivalents (FTEs), including the classifications of Building Inspector and Supervising Building Inspector. ABMEI's contract expires December 10, 2009 and negotiations with ABMEI are expected to begin in September 2009.

2009 Labor Negotiations Cost Saving Strategies

City of San José employees are of the highest caliber, who truly value public service and who bring the highest professional standards to their work every day. They are a critical part of this City and the reason the City is able to provide the essential services that it provides.

However, given the City's fiscal situation and the current general fund structural deficit projection for 2009-2010 of $59 million to $65 million, negotiations during 2009 will be challenging for both the City and the union negotiation teams. Personnel costs are approximately two-thirds of the general fund expenditures and the elimination of the structural deficit was identified by the City Council in 2007 as one of its top priorities. In addition, from 2000-2001 to 2008-2009, base salary for City employees has grown approximately 42.6% and benefits have increased approximately 122.3%.

The City Manager's General Fund Structural Deficit Elimination Plan identified various items that could be negotiated to reduce personnel costs over time. They include, but are not limited to, the following:

Time, Amount and Method to Reach Maximum Compensation

At present, the City utilizes a traditional public sector salary schedule with five, 5% salary steps for most non-management job classifications that occur automatically unless action is taken to withhold the 5% increase based on poor performance. The typical time it takes an employee to reach the top step of the salary range is three and a half years.

Sick Leave Payment Modifications Upon Retirement

Currently, employees who retire from City service are eligible to receive their accrued sick leave as a cash payment. Employees represented by the San Jose Police Officers Association and the San Jose Firefighters union are eligible to receive up to 100% of their sick leave paid out at retirement, with no cap on the number of hours. All other bargaining units are eligible to receive up to 75% of their sick leave paid out to a maximum of 1200 hours at retirement. Although payouts of accrued sick leave is common in municipal governments, surveys have shown that the City's sick leave payout benefit is above the market and could be reduced to save personnel costs.

Retirement Benefits

The retirement benefit is the most expensive benefit provided to employees. For the entire 2008-2009 fiscal year, the City has contributed approximately $120 million into the retirement plans. The City recognizes this is a very important benefit, which is why we are obligated to ensure that the benefit provided is sustainable in the long-term.

The City Council was recently advised that the value of the City's pension funds have declined significantly in recent months. The administration will be exploring alternatives for creating a long term sustainable model for retirement benefits, which can include different benefits for new employees that still provide an adequate retirement benefit at a more sustainable long-term cost.

Workers' Compensation Offset for Public Safety

In the disability program for public safety employees, there is an overlap in benefits after a disability retirement in that public safety employees can receive both disability payments from the City and disability retirement benefits. This overlap does not occur in most California agencies or in the Federated City Employees' Retirement System. The Federated plan has a workers' compensation offset provision.

Overtime Eligibility Policies

The overtime eligibility for many City employees is more generous than required by Federal Fair Labor Standards Act (FLSA). For example, paid time off is included in the calculation of overtime and results in sizeable overtime payouts even when an employee has not actually worked more than forty hours in a week. In addition, there are several positions that could be deemed as exempt from overtime under the law, but are currently eligible for overtime through contract provisions.

Use of Public Safety Civilian Positions

Given the budget situation, it is imperative that the City fully maximize its current sworn public safety employees in areas requiring their training and expertise and not allocate those resources to work that can be performed by civilian employees at a lower cost. This includes allocating sworn public safety employees currently performing civilian activities to functions requiring sworn public safety employees.

Modify Minimum Fire Staffing Policies

The current contract with the San Jose Firefighters union contains provisions that require a certain level of staffing. Identifying opportunities to streamline staffing and considering alternate service delivery models in the Fire Department may provide an opportunity to control personnel expenditures in the future.

EVALUATION AND FOLLOW-UP

When Tentative Agreements are reached with the bargaining units during contract negotiations for a new contract, they will be brought to Council in open session for approval.

PUBLIC OUTREACH/INTEREST

The purpose of this section is to describe discussions that have occurred with the public, stakeholders, community groups and/or other governmental agencies. Staff will be asked to use the following checklist to determine if items are to be considered items of "Significant Public Interest", thus requiring additional notification per the matrix below. Please note the outreach that was done.

- ☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
  (Required: E-mail and Website Posting)
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item is a staff report and does not require Council action. In order to provide the public with information about the City's labor negotiations, this report will be posted on the internet.

COORDINATION

This memo has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

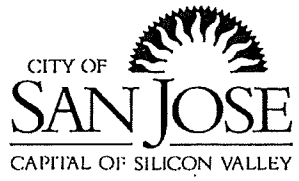
Debra Figone
City Manager

For questions please contact Alex Gurza, Director of Employee Relations, at 535-8155.

Attachment A: Guiding Principles for Labor Negotiations (adopted June 12, 2007)

Attachment B: Council Policy on Labor Negotiation Guidelines (approved March 4, 2008)

COUNCL AGENDA: 06/12/07
ITEM: 3-3



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Les White

SUBJECT: See Below

DATE: May 31, 2007

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: GUIDING PRINCIPLES FOR LABOR NEGOTIATIONS

RECOMMENDATION

Approve the guiding principles for labor negotiations.

OUTCOME

Adoption of the guiding principles for labor negotiations.

BACKGROUND

In accordance with the Mayor's March Budget Message, the proposed budget for Fiscal Year 2007-2008, responds to the priorities of both the community and the City Council, while addressing the sixth consecutive year of a multi-million dollar General Fund shortfall. However, projected growth in personal service costs continues to out-pace revenue growth through Fiscal Year 2011-2012.

Personal service costs account for two-thirds of the total General Fund uses. The increase of approximately 45% in the average budgeted position cost from 2000 to present can be attributed to three main cost components: salary, health care benefits and pension benefits. Along with the budget shortfalls already predicted for the next five fiscal years and the continued increases in cost for current employee salaries and benefits, liability for post-employment health care benefits for retirees has been estimated to be as high as $1.4 billion.

Salaries and benefits are determined through the negotiation process with the City's bargaining units. In order to address the significant issues identified above, the City should be guided by principles in labor negotiations in order to remain mindful of the service needs of the City and the continued fiscal challenges.

ANALYSIS

One of the primary functions of the City is to provide services to the community. Accordingly, 2/3 of the General Fund is allocated to personal services. However, personal services costs have risen significantly during a time of serious fiscal challenges. Fiscal Year 2007-2008 marks the sixth consecutive year of budget shortfalls, with projected shortfalls in the next four years.

As the City continues to explore innovative methods to bridge the gap between revenue and expenses, it is important to partner with our bargaining units in addressing these ongoing costs. Although it is very important to work together with our employees and bargaining unit representatives on collaborative efforts on an on-going basis, the cost of salaries and benefits of bargaining unit employees are determined through the contract negotiation process. These negotiations occur prior the expiration of the eleven agreements with the bargaining units. These agreements expire at different times and in different years.

The following guiding principles are being presented for consideration related to present and future labor negotiations:

- *Focus on the cost of total compensation[1] while considering the City's fiscal condition, revenue growth, and changes in the Consumer Price Index*
- *Use short-term and long-term strategies to address increasing benefit costs such as wellness programs, cost containment initiatives, etc.*
- *Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff*
- *Remain mindful of increasing costs, including the retiree healthcare liability*
- *To the extent possible, preserve the City's market competitiveness as an employer*
- *Efficiently and effectively provide services that align with both the priorities of the community and the City Council*

These guiding principles will align the approach to bargaining with the priorities established by both the Council and the community.

PUBLIC OUTREACH/INTEREST

The purpose of this section is to describe discussions that have occurred with the public, stakeholders, community groups and/or other governmental agencies. Staff will be asked to use the following checklist to determine if items are to be considered items of "Significant Public Interest", thus requiring additional notification per the matrix below. Please note the outreach that was done.

[1] Total Compensation includes the total costs of a position including salary, pension, and all other benefits.

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Public Outreach does not apply to the item; however, this memorandum will be placed on the City website for the June 12, 2007 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and Office of Employee Relations. A meeting is scheduled with the City Labor Alliance (CLA) to review these principles and receive comments.

CEQA

Not a project.

LES WHITE
City Manager

For questions please contact me at 535-8111.

COUNCIL POLICY

TITLE COUNCIL LABOR NEGOTIATION GUIDELINES	PAGE 1 of 2	POLICY NUMBER 0-39
EFFECTIVE DATE March 4, 2008	REVISED DATE	
APPROVED BY COUNCIL ACTION		3/4/2008, Item 3.6, Res. No. 74265

BACKGROUND

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San José Employer-Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate labor contracts on behalf of the City to the City Manager or the City Manager's designee.

Pursuant to the Meyers-Milias-Brown Act, the City has a right to insist that contract negotiations take place at the bargaining table between the designated representatives of the City and the designated representatives of the various bargaining unit employees. Members of the City Council should refrain from negotiating directly with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith.

As used in this policy, "negotiate" means to meet and confer with another to endeavor to reach agreement on matters within the scope of representation.

PURPOSE

This policy applies only to the Mayor, members of the City Council and Mayor and Council staff.

References in this policy to members of the City Council or Council staff include the Mayor and Mayor's staff.

The purpose of this policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that would circumvent the City's designated bargaining team.

POLICY

It is the policy of the City Council that all of its members and staff shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San José Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. Members of the City Council or Council staff shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. Nothing in this policy shall prohibit members of the City Council or Council staff from listening to bargaining unit representatives or persons acting on their behalf. Members of the City Council shall not knowingly respond to or discuss any proposals not presented to the negotiating team or any confidential closed session discussion.

5. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council material communications regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).
6. Authorization and direction to the City's negotiating team is provided in closed session. In order to maintain the integrity of the negotiation process, such authorization must remain confidential.