



Office of the City Manager

EMPLOYEE RELATIONS

January 9, 2008

Randy Sekany
President
San Jose Fire Fighters, IAFF Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

Re: City-Paid Release Time

Dear Randy:

This letter is to follow-up with you on the issues of City-paid release time for Local 230 representatives. I would like to assure you that the City has, and will continue to, comply with all applicable laws, regulations and policies regarding paid time off. The City must ensure that City-paid release time away from an employee's normal job duties is being approved in appropriate circumstances.

There are certain types of activities that are clearly important union work, but it may not be appropriate or legal to approve use of City-paid time to participate in these activities. Ensuring that we approve paid time off appropriately is important to avoid any issues regarding the use of City funds.

Under the Meyers-Milias Brown Act (MMBA), the City is required to allow a reasonable number of employee representatives reasonable time off without loss of compensation when formally meeting and conferring with City representatives on matters within the scope of representation. (The relevant sections are attached.)

In addition to the requirements under the MMBA, the City's Employer-Employee Relations Resolution (City Resolution #39367) also provides for reasonable time off to meet-and-confer. The applicable section is as follows:

Section 9. Reasonable Time Off to Meet and Confer. A formally recognized employee organization may select a reasonable number, not to exceed three (3) City employees as representatives of such employee organization to attend scheduled meetings with the Municipal Employee Relations Officers or other management officials authorized by her/him on subjects within the scope of representation during regular work hours without loss of compensation or other benefits. Where in her/his opinion circumstances so warrant, the Municipal Employee Relations Officer may approve the attendance at such meetings of additional employee representatives with or without loss of compensation or other benefits. The employee organization shall, whenever practicable, submit the names of all such employee representatives to the Municipal Employee Relations Officer at least two working days in advance of such meetings. Provided further that any such meeting is subject to scheduling by City management in a manner consistent with operating needs and work schedules.

Nothing provided herein, however, shall limit or restrict City management from scheduling such meetings before or after regular work hours under appropriate circumstances.

The Department also has a relevant section in the ROPP. Section 4.210 B states:

Union Meetings: Employees of the SJFD are not permitted to attend employee organization/Union meetings during working hours.

Exceptions to this policy are:

1. Employees selected to represent the employee organization/Union during the Meet and Confer process. The number of such employees is limited by the provisions of the Employee/Employer Resolution #39367.
2. Designated representatives of the employee organization/Union who represent their respective organization in scheduled meetings with management, such as scheduled grievance meetings.
3. Any other exception must receive prior approval by the Fire Chief, via the chain of command, of the individual concerned.

There are a variety of circumstances where City-paid release time can be approved. Reasonable paid release time can be approved for the following activities:

- Participating in Meet-and-Confer sessions between the Union and the City
- Grievance handling/processing
- Representing employees during investigative interviews, Skelly Conferences, and appeal hearings
- Representing employees during other appeal processes, such as before the Civil Service Commission
- Attending City Labor/Management committees
- Attending City Council meetings when matters affecting the Union are considered
- Attending Police and Fire Department Retirement Board meetings
- Attending Benefits Review Forum (BRF) meetings
- Attending City Labor Alliance (CLA) meetings held with the City Manager or Employee Relations
- Attending meetings scheduled by City or Fire Administration when attendance is requested.
- Attending other approved meetings between labor and City management

The issue of City-paid release time only arises when a union representative is on-duty. (Release time is only granted when the employee is normally scheduled to work.) In these situations, if the designated Union representative finds it necessary to leave assigned duties, the representative must inform the shift's Deputy Fire Chief of the general nature for the release time and receive authorization prior to leaving assigned duties. In urgent situations, approval to leave assigned duties should be requested from the Duty Chief.

The Deputy Chief or the Duty Chief are authorized as representatives of the Fire Chief and can approve absences. The Deputy or Duty Chief will provide the authorization to the appropriate Battalion Chief to ensure that the absence from normal duties is properly coded. Upon return to assigned duties, the representative must report back to the immediate supervisor.

Some situations may arise on short notice, such as representing an employee during an investigative interview. However, for pre-scheduled meetings, whenever possible the request for release time should be made 24-48 hours in advance. In all cases, however, the approval must be requested before leaving normal duties.

The number of employees who are granted City-paid release time vary depending on the particular issue. For example, for negotiations, the City's Employer-Employee Relations Resolution (City Resolution #39367) provides for up to three City employees to be granted paid release time. However, the Municipal Employee Relations Officer may approve more than three in particular circumstances, as was done during the last arbitration hearing process.

For attendance at grievance hearings, the MOA has specific provisions regarding paid release time:

20.5.9 Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. One (1) spokesperson shall be permitted to be present without loss of compensation for grievances filed by the Union.

20.5.10 Arrangements for release time for grievant's witnesses shall, wherever possible, be made with the Municipal Employee Relations Officer no later than twenty-four (24) hours in advance of the scheduled hearing.

20.9.1 Although grievances may be processed during normally scheduled working hours, the Union agrees that the time spent by its designated representatives shall be kept to a reasonable minimum and that no Union representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Union also agrees that it will not process grievances during periods of overtime.

For CLA meetings, the City provides release time for up to two City employee representatives per bargaining unit. In most of the situations involving representing an employee, such as grievances and disciplinary matters, normally one City employee representative will be approved for City-paid release time.

Please note that the issues in this letter relate to paid time off granted to union representatives when the union representative is on-duty and the City is providing the paid release time for union business. A Local 230 representative can also arrange for a shift trade or request paid time off such as vacation or comp time to perform union business or participate in other

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activities that are not covered by City-paid release time. However, even if using comp time or off-duty, City employees should not participate in political activities, such as campaigning, while in uniform.

As you know, Minimum Staffing article of the MOA has a section (33.2.6.2) that provides the Fire Chief with the discretion not to fill vacancies for a total of three union Executive Board members or designees for union business when the absence is 12 hours or less. Although this section provides the Chief with the flexibility not to fill certain vacancies, it is not an automatic approval for 12 hours of City-paid release time per shift.

Since paid release time involves the use of City funds, we must ensure that the release time is only approved in appropriate circumstances. Accordingly, the Union Time Off (UTO) code should only be used in the situations where City-paid release time has been approved. For example, during any particular shift, the time spent on UTO should only be for the duration of the particular meeting (including reasonable travel time) and not for a set period of time. For example, a Skelly Conference may be only an hour, whereas a contract negotiation session may be 4 hours or longer.

We appreciate your cooperation in working with the City on this issue to ensure that City-paid release time is approved in appropriate circumstances. As issues arise about the approval of City-paid release time, please do not hesitate to let me know so that we can work together to resolve them.

Sincerely,



Alex Gurza
Director of Employee Relations

c: Darryl Von Raesfeld, Fire Chief
Nick Thomas, Assistant Fire Chief

MEYERS-MILIAS-BROWN ACT

3504. Scope of representation

The scope of representation shall include all matters relating 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.

3505.3. Time off allowances to employee representatives

Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the public agency on matters within the scope of representation.