



Memorandum

TO: Rules Committee

FROM: Alex Gurza

**SUBJECT: Revision of Definition of
Surviving Child**

DATE: August 15, 2005

Approved

Kay Winer

Date

8/15/05

This is a supplement to the memo that was issued to the Rules Committee from the Police and Fire Retirement Board of Administration on or about August 11, 2005.

The Board has requested that the expansion of the definition of a "surviving child" in the San Jose Municipal Code be approved and adopted. The proposed revision would include children born to or adopted by retirees after the individual retires. Currently, "surviving child" in the San Jose Municipal Code means the natural or adopted child or children of such deceased person that meets all of the following requirements:

- i.) The child survives the deceased person's death; and
- ii.) The child is unmarried at the time of the deceased person's death; and
- iii.) The child is under the age of eighteen years at the time of the deceased person's death; and
- iv.) The child is in existence or conceived at the time the deceased person retired for disability or service; and
- v.) If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to deceased person's death.

In 2003, the proposal to expand the definition of a "surviving child" was forwarded to the Rules Committee for further action, including agendaizing this item on the City Council Agenda for approval. It was determined that a change in the Police and Fire Retirement Plan to expand the "surviving child" benefit is subject to the meet and confer process. Therefore, this item was deferred to the Police and Fire Tripartite Retirement Memorandum of Agreement (MOA) negotiation process.

In August, 2004, the City Manager's Office of Employee Relations provided an update to the Rules Committee on this item (see attached). It was noted in this memo that the Tripartite Retirement MOA with the Police Officers' Association and International Association of Firefighters, Local 230 expired on June 30, 2004 and that the City was

still in negotiations with these bargaining groups. Further, any updates on negotiations would be provided to City Council in Closed Session, which have taken place periodically.

At the September 15, 2004 Rules Committee meeting it was requested that the City Attorney report back on the question of a waiver of the meet and confer process in order to expand the "surviving child" benefit. The City Attorney's Office issued a memo on or about September 27, 2004 (see attached) in response to this question and stated that in order for a waiver to be effective for purposes of implementation of a benefit, agreement between the City and a labor organization to mutually waive the meet and confer process is required. Additionally, the City Attorney's memo mentioned that the implementation of a retirement benefit for one or more employee organizations may trigger the reopener or "Me too" provisions of negotiated labor agreements with other bargaining groups.

While we are unable to disclose details of the negotiations, retirement benefits, including the expansion to the definition of "surviving child" for the Police and Fire Retirement Plan, is subject to the meet and confer process. We will continue to provide updates on negotiations to City Council in Closed Session.



Alex Gurza
Office of Employee Relations



Memorandum

TO: Rules Committee

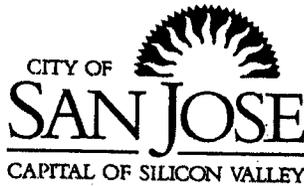
FROM: Alex Gurza

SUBJECT: Revision of Definition of Surviving Child **DATE: August 18, 2004**

In November 2002, our office received notification that the Police & Fire Retirement Board had requested a revision to the definition of "surviving child" for the Police & Fire Department Retirement Plan that would include children born to or adopted by retirees after the individual retires. The Police & Fire Retirement Board's actuary estimated that this enhanced benefit for retirees would produce an increased cost of .037% to the Police & Fire payroll (\$64,000 per year) and the City of San Jose determined that this enhanced benefit for future retirees is subject to the meet and confer process. Therefore, as stated in our Memorandum to the Director of Retirement Services on April 28, 2003, this item was deferred to the retirement negotiation process.

The Memorandum of Agreement on Retirement Benefits between the City of San Jose, International Association of Firefighters, Local No. 230 and the San Jose Police Officers' Association expired on June 30, 2004. The City of San Jose is still in negotiations with the POA and Local 230. While we are unable to disclose any details on the negotiations, this is an item that has been requested by the Police & Fire Retirement Board and is one of several proposed revisions to the Police & Fire Retirement Plan that are subject to the meet and confer process. We will continue to provide updates on negotiations to City Council in Closed Session.

Alex Gurza
Director of Employee Relations



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CITY MANAGER
2004 SEP 28 A 11:35

Memorandum

TO: Rules Committee

FROM: Richard Doyle
City Attorney

SUBJECT: Police and Fire Department
Retirement Plan – Surviving
Child

DATE: September 27, 2004

Background

At the September 15, 2004 Rules Committee Meeting, Board of Administration for the Police and Fire Department Retirement Plan requested that the current definition of "surviving child" in the San Jose Municipal Code be revised. The proposed revision would include children born to or adopted by retirees after the individual retires. The Rules Committee requested that the City Attorney to report back on the question of a waiver of the meet and confer process in order to implement the "surviving child" benefit.

Discussion

A. Meet and Confer - Waiver

The duty to meet and confer in good faith under the Meyers-Miliias-Brown Act (MMBA) (Gov. Code Section 3500 *et seq.*) requires both the City as a public employer and a recognized employee organization to meet and confer about any proposed change in work rules or regulations within the scope of representation. (Gov. Code Section 3504.5.)

A change in the Police and Fire Department Retirement Plan to provide for the "surviving child" benefit is subject to the meet and confer process under the MMBA since it affects a condition of employment for current active employees. In other words, implementation of the benefit by the City would require notice and an opportunity to meet and confer with the affected labor organizations.

A labor organization may waive its right to meet and confer through its own action by a "clear and unmistakable" waiver. A party may also waive the right to meet and confer by inaction after notice of a proposed change in working conditions.

Waiver of the right to meet and confer by one party, such as a employee organization, does not suspend the duty to bargain. The MMBA imposes a mutual obligation to meet and confer on the request by either party and to endeavor to reach agreement on

matters within the scope of representation. (Gov. Code Section 3505); Independent Union of Public Service Employees v. County of Sacramento (1983) 147 Cal.App.3d 482. Therefore, in order for a waiver to be effective for purposes of implementation of a benefit, agreement between the City and a labor organization to **mutually** waive the meet and confer process is required.

B. Reopening of Negotiations in Other Labor Agreements

Implementation of the "surviving child" benefit for the Police and Fire Department Retirement Plan will trigger the reopener provision in current memoranda of agreement (MOAs) with City employee organizations. Current reopener provisions in side letters address situations where another employee bargaining unit may receive through negotiation or direction by the City Council any modification, adjustment or increase of economic benefits resulting in a net increase in total cost to the City effective during the first year of an MOA. These "Me too" provisions provide that the affected employee organization and the City will meet for the purpose of exchanging proposals to determine the implementation of the equivalent net percentage of increase for the bargaining unit.

This means that if the "surviving child" retirement benefit is implemented, the reopener provision in current MOAs with other employee organizations will become operative. This should appropriately be discussed in the context of labor negotiations in closed session.

Conclusion

Waiver of the right to meet and confer by one party, such as a employee organization, does not suspend the duty to bargain. State law imposes a mutual obligation to meet and confer on matters within the scope of representation. Thus, both parties to an agreement must agree to waive their rights to meet and confer in order to implement a retirement benefit enhancement.

Implementation of a retirement benefit for one or more employee organizations will trigger the reopener or "Me too" provisions of recently negotiated labor agreements.



Richard Doyle
City Attorney

cc: Mayor and City Council
Del Borgsdorf ✓