SAN MATEO COUNTY FIRE FIGHTERS
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS - LOCAL 2400

AFFILIATED WITH
A.F.L.-C.I.O.
CENTRAL LABOR COUNCIL
OF SAN MATEO COUNTY
FEDERATED FIRE FIGHTERS
OF CALIFORNIA
INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS

(415) 348-2400
35 SO. BAYSHORE BLVD.
SAN MATEO, CALIFORNIA 94401

February 2, 1982

Mr. O. James Linenberger
Deputy City Manager
City of San Mateo
330 West Twentieth Avenue
San Mateo, California 94403

Dear Mr. Linnenberger:

In response to your letter of January 25, 1982, there are a number of areas where you have erred in your analysis of M-M-B and its application to the issues before us.

The courts, in the cases cited to you, did not differentiate between new, existing or retired employees and the issues ruled on pertained to what are mandatory subjects for bargaining. It is obvious from those cases that the city has a mandatory obligation to comply with the statutory requirements of M-M-B.

In your letter you cite Government Code S.3504 as having precedence over what issues are subject to meet and confer. In Fire Fighters Union vs. City of Vallejo the Court directed its attention to the language at the end of Section 3504 which limits meeting and conferring on "merits, necessity or organization of any service or activity provided by law or executive order." The Court held that this language should not be read as making the scope of representation under the M-M-B Act narrower than the scope of bargaining in the private sector.

> "Although the NLRA does not contain specific wording comparable to the 'merits, necessity or organization' terminology in the city charter and the state act, the underlying fear that generated this language - that is, that wages, hours and working condit ons could be expanded beyond reasonable boundaries to deprive an employer of his legitimate management prerogatives - lies imbedded in federal precedents under the NLRA. As a review of federal case law in this field demonstrates, the trepidation that the union would extend its province into matters that should properly remain in the hands of employers has been incorporated into the interpretation of the scope of 'wages, hours and terms and conditions of employment.'

EXHIBIT E

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February 2, 1982

"Thus, because the federal decisions effectively reflect the same interests as those that prompted the inclusion of the 'merits, necessity or organization' bargaining limitation in the charter provision and state act, the federal precedents provide reliable if analogous authority on the issue."

The Vallejo case went on to hold that subjects such as schedules, vacancies, promotions, manning procedure, work load, and personnel reduction were all within the scope of representation.

Our current agreement, Section 23, Physical Fitness, sets forth the type of standards an employee is required to comply with. No mention is made of any individual contractual commitment. Is the city now taking the position that GC S.3504 preempts the provisions in our current contract pertaining to physical fitness? If the foregoing is an accurate assumption, then your position would be contrary to current California Labor Law and to the appropriate provision of our current Memorandum of Understanding. It is indeed very difficult to review your position with any degree of objectivity when in fact we have met and conferred in the past on physical fitness.

Finally, it is our position that until you comply with Government Code S.3500 - 3511 of the State of California, Local 2400 refuses to accept the implementation of"physical standards and no smoking clause."

We are willing to meet and confer on the issues at any mutually agreeable time and place.

Sincerely,

LEO C. MIDDENDORF
Labor Relations Representative
Paralegal

LCM/wwc

cc: Mayor and City Council
Ron Munier, District Vice President, Local 2400
Richard Graham, District Vice President, Local 2400

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