# 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

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January 18, 1982

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

Dear Mr. Linenberger:

In regard to your letter of December 31, 1981 wherein the City of San Mateo maintains that classification of work and the establishment of standards are management rights and not subject to the meet and confer process. The position the City has taken on the physical standards and no-smoking clause is contrary to the Meyers-Milias-Brown Act and to various court cases. Through the enactment of the Meyers-Milias-Brown Act (Gov. Code SS3500-3510) in 1968, the California Legislature recognized the right of local government employees to organize collectively and be represented by an employee organization of their own choosing "on all matters of employer-employee relations." (Gov. Code S3502).

As noted in International Association of Fire Fighters Union Local 1974 v. City of Pleasanton (1976) 56 Cal. App. 3d 959, 967-968, the stated purpose of the Act is to improve employer-employee relations by promoting "full communication between public employers and their employees":

> "Section 3503 establishes the right of recognized employee unions directly to represent their members in 'employment relations with public agencies'. This right to representation reaches 'all matters of employer-employee relations,' (Gov. Code, S3502; italics added) and encompasses 'but (is) not limited to wages, hours, and other terms and conditions of employment' (Gov. Code, S3504)." (Social Workers Union, Local 535 v. Alameda County Welfare Dept. 1974) 11 Cal.ed 382, 388 (113 Cal.Rptr, 461, 521 P.2d 453) (Original italics; fn. omitted. For the texts of the M-M-B Act sections cited, see fn. 2, ante).) The M-M-B Act thus "defines the scope of the employee's right to union representation in language that is broad and generous." (Ibid. (Original italics).) The phrase "wages, hours, and other terms and conditions of employment: is to be liberally construed, consistent with the "general interpretation" which has been accorded it in decisions dealing with the federal law from which it has been incorporated into the M-M-B Act.(Id., at p. 391).

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To achieve this purpose, Section 3505 of the Government Code imposes the obligation upon local governmental agencies "to meet and confer and endeavor to reach agreement on wages, hours, and other terms and conditions of employment" prior to adopting any rule or policy relating to those matters. In Los Angeles County Civil Service Commission vs. Superior Court (1978) 23 Cal. 3d 55, the Supreme Court held that the Act imposes this obligation not only on city councils and boards of supervisors, but also on all other local boards and commissions which have authority over wages, hours, and other terms and conditions of employment. It is now well established that when a local governmental agency has amended a rule affecting the terms and conditions of employment of its employees without first meeting and conferring with the recognized employee organization until either an agreement or an impasse has been reached, the purported amendment is void and relief should be granted restraining that agency from implementing, enforcing, or otherwise giving effect to it.

In International Association of Fire Fighters Union, Local 1974 vs. City of Pleasanton, supra, 56 Cal. App. 3d 959, the Court of Appeal held that because the Pleasanton City Council had failed to meet and confer in good faith over proposed rule changes relative to (1) the definition of an employee grievance, (2) pay for sick leave earned by an employee but not actually taken, (3) "educational incentive pay", (4) the procedure whereby the City announced competitive examinations for employment, (5) the time at which an employee serving an initial twelve-month probationary period would be eligible for a non-automatic "merit pay increase", and (6) the reclassification of employees holding the positions of "Fire Captain" and "Fire Prevention Officer" as "middle management" employees of the City, injunctive relief should be granted enjoining the City from implementing, enforcing, or otherwise giving effect to those rule changes.

In Vernon Fire Fighters, Local 2312 v. City of Vernon (1980) 107 Cal.App. 3d 802, the Court of Appeal stated:

> The rule in California is well settled. A city's unilateral change in a matter within the scope of representation is a per se violation of the duty to meet and confer in good faith. "(T)he courts have not been reluctant to intervene 'when a public agency has taken unilateral action without bargaining at all. In such situations, courts have been quite zealous in condemning the unilateral action and in granting appropriate relief". (International Assn. of Fire Fighters Union v. City of Pleasanton, supra, 56 Cal. App. 3d 959,.967, quoting Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 753-754 (hereinafter Grodin, Public Employee Bargaining in California)).



The California Supreme Court has unequivocally held that vacancies and promotions are matters within the scope of representation and hence mandatory subjects for the meet and confer process under the Meyers-Milias-Brown Act. See, Fire Fighters Union v. City of Vallejo (1974) 12 Cal. 3d 608, 618 526 P. 2d 971.

Moreover, it appears the City intends to use physical standards and no-smoking as a safety measure in the department. Again, the California Supreme Court recognized that any rules or practices affecting employee safety are mandatory subjects

of bargaining, and thus mandatory subjects for the meet and confer process. Fire Fighters Union v. City of Vallejo, supra, 12 Cal. 3d 608, 620. See also NLRB v. Gulf Power Company (5th Cir. 1967) 384 F. 2d 822.

Any doubt that the City is required to meet and confer over the physical standards program is resolved by analagous discussions of the National Labor Relations Board. In American Gilsonite Company (1959) 122 NLRB 1006, the National Labor Relations Board found that an aptitude test was a mandatory subject of bargaining and that the unilateral implementation of a testing procedure was an unfair labor practice. In Medi Center, Mid-South Hospital (1975) 221 NLRB 670, the Board reviewed cases which held that requirements imposed during the term of the collective bargaining agreement that an employee submit to any kind of examination affects conditions of employment and hence are mandatory subjects of bargaining. (221 NLRB at 677). If employees are subjected "to a jeopardy which had not prevailed under the preexisting rules," the procedure is not subject to unilateral employer control and is a mandatory subject for bargaining.

Thus, it cannot seriously be contended that the City is not required to meet and confer with the Union and endeavor to reach agreement prior to the implementation of any physical standards program. The program has a direct effect on safety, and will undoubtedly have an impact on employee discipline; and also constitutes a jeopardy which did not exist prior to the program's implementation. There is no defense for your refusal to meet and confer.

In view of the aforementioned Court cases and NLRB decisions I urge that the City refrain from implementing the physical standards and no-smoking clause until you have complied with the appropriate state statutes.

Sincerely yours,

Leo C. Middendorf

LEO C. MIDDENDORF
Labor Relations Representative
Paralegal

LCM/wwc

cc: Ron Munier, District Vice President
Rich Graham, District Vice President
Mayor and City Council

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