

March 22, 2010

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**VIA E-MAIL AND REGULAR MAIL**

Martin R. Gran  
Director of Employee Relations Division  
City and County of San Francisco  
Department of Human Resources  
One South Van Ness Avenue, 4th Floor  
San Francisco, CA 94103-5413

**Re: Grievance Concerning Unilateral Changes to the Workweek  
File No. 037073**

Dear Martin:

Please consider this a grievance on behalf of my client, the San Francisco Municipal Executives' Association ("MEA"). Notwithstanding the Grievance Procedure laid out in section I.G. of the parties' Memorandum of Understanding, which contemplates a four-step grievance procedure, MEA initially files this grievance at "Step 3" (see paragraph 32: "appeal to the Director, Employee Relations"). We do so for two reasons: (1) fulfilling the normal steps of the Grievance Procedure and the timeframes therein will prevent ultimate determination of the grievance prior to our members being irreparably harmed by any "layoff" going into effect, and (2) because MEA believes that no one below your level has sufficient authority to grant the grievance.

Frankly, because the City's unilateral action in this instance originated at the highest level of city government, MEA believes that no one short of the Mayor has sufficient authority to grant this grievance. Nonetheless, in order to give the City an opportunity to resolve the grievance before arbitration, we grieve.

With respect to timing, MEA invokes paragraph 40 *et seq.* of the MOU ("Immediate Dispute Resolution"). The dispute presented both "imminently affects the association" and "a substantial number of members," and thereby qualifies for immediate resolution (more on timing below).

## FACTS

On **February 17, 2010**, you, among others within the city's labor relations hierarchy, as well as Mr. Kawa from the Mayor's Office, attended a meeting at Local 21's headquarters and explained *for the first time* that the City would be proposing a mass layoff/rehire scheme designed to reduce the workweek of thousands of city employees from 40 hours to 37½ hours

On **March 1, 2010**, you issued a memorandum to city employees that purported to unilaterally create new layoff procedures, including "canvassing processes," "layoff web pages" and revise timeframes, none of which were previously noticed to or discussed with MEA.

On **March 2, 2010**, the City's Mayor, Gavin Newsom, wrote *directly* to City employees, including those represented by MEA (copy enclosed). The Mayor stated that laid-off employees would be offered "newly created part-time positions," most based on a 37½-hour workweek.

Continuing its unapologetic unilateralism, on **March 5, 2010**—a mere 16 days after first announcing the scheme—the City issued thousands of purported "layoff notices" to city employees. Our initial review suggests 90% or more of MEA's bargaining unit received "layoff notices."

These "layoff notices" (one copy enclosed, *albeit with the employee's identity deleted*) advises that "effective May, 2010 (close of business Friday, May 7, 2010), you will be laid-off from the position detailed below," then describes the employee's position, and asserts a "Lack of Funds or Lack of Work" as the reason.

Multiple other representations, verbal and documented, by City officials of sufficient authority establish indisputably the City's plan to unilaterally reduce MEA-represented employees' normal workweek under the fiction of a "layoff." Put simply, as MEA understands it, the City will layoff an employee on a figurative "Day 1," then bring her/him back on "Day 2"—with no actual break in service—performing the same duties, only for 2½ hours less per week.

## MOU PROVISIONS VIOLATED

The City has already violated the MOU. Proceeding any further with the unilateral reduction in workweek would effectively eviscerate the MOU and severely impair and undermine MEA's ability to adequately represent its members. Here is why:

- First, your March 1 memorandum violates **Section I.D. (Paras. 10-14)** of the MOU by unilaterally revising lay-off and hold-over

list procedures, with no prior warning and no opportunity for MEA to meet-and-confer.

- Second, a 37½-hour workweek is illegal under **paragraphs 141 and 142** "Regular Work Day" of eight (8) hours and "Regular Workweek" of five eight-hour days in a seven day period—which mandate a 40-hour work schedule for MEA employees, unless the MOU provides otherwise (which it generally does not) and are binding on the City at least until June 30, 2011. *In other words, during the life of the contract, the City cannot change the 40-hour work schedule unless MEA agrees.*
- Third, the City would violate contractual wage scales (see **Section 111.A., paras. 66 et seq.**) by reducing the workweek thereby reducing employee wages. MEA bargained for wages premised upon a 40-hour week. The City's scheme would illegally reduce wages by an hourly rate (multiplied by 2½). (And see FLSA reference below.)
- Fourth, this "strawman" layoff scheme constitutes blatant, unlawful discrimination against, coercion and restraint of, and interference with MEA's statutory and Charter responsibility as the exclusive representative of the City's managers. Last June, the City inked a two-year concession agreement with MEA that included a one-year extension; yet, now, mere months later, acting with misguided notions of managerial prerogative, the City seeks to marginalize and undermine MEA by unilaterally altering members' working conditions.

In truth, there are easily half a dozen more violations of the MOU; however, given the scope of the violations noted above, we pursue only the "big-ticket" items.

But in addition to breaching its contract, the unilateral City actions complained of also potentially violate 42 U.S.C. § 1983, the Meyers-Milias-Brown Act (Cal. Gov't Code §§ 3500 *et seq.*), and the Fair Labor Standards Act (28 U.S.C. § 201 *et seq.*), and MEA reserves the right to pursue those violations in the appropriate forum.

#### **REMEDY REQUESTED**

That the City rescind all layoff notices issued on March 5, 2010, **immediately and completely**; and

Martin R. Gran  
Re: Grievance Concerning Unilateral Changes to the Workweek  
March 22, 2010  
Page 4

That the new layoff procedures announced in your memorandum of March 1 be rescinded and, if the City still aims to pursue them, be presented to MEA in draft/proposed form along with an invitation to meet and confer.

**NEED TO EXPEDITE THE DETERMINATION**

Please contact me to discuss this grievance at your earliest opportunity. With respect to timing, we request that the City agree to the following: (1) the 20-day window for scheduling and concluding discussions **be reduced to three (3) days**; (2) that the parties **immediately select an arbitrator** to hear the event on short notice; and (3) the parties require the **arbitrator to issue a bench decision**. Requests 1-3 are necessary to ensure that the arbitrator can rule on the parties' rights and obligations prior to any employee being irreparably harmed by being laid off.

If the City is not amenable to the expedited procedures requested, MEA may be forced to restrain any effort by the City that would deprive the arbitrator of jurisdiction or of the ability to render a timely and meaningful decision.

Finally, on the conciliatory front, MEA recognizes that the City faces significant budget problems. As always, as an organization representing managers, it is prepared to engage in discussions, collectively and individually, to tackle those problems, both on a short and long-term basis. But when the City feels obligated to open such discussions in the shadow of layoff threats, it fosters fear and discord rather than collaboration.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

GMA:jo

Enclosures

cc: Eileen Hirst, President, Municipal Executives' Association  
Rebecca Rhine, Executive Director, Municipal Executives' Association