

CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. _____

File No. _____

Ord No. _____

Agenda Item No.: 19

Date: May 19, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Gail Sullivan, Deputy City Manager
Sheryl Bennett, Director of Human Resources

SUBJECT: Appeal of City Manager's Decision of Escondido City Employees' Association (ECEA's) General Grievance Regarding Seniority in Layoffs and Bumping Rights

RECOMMENDATION:

Affirm the City Manager's decision denying ECEA's general grievance based on the City's Personnel Rules and Regulations and the Memorandum of Understanding – Escondido City Employees' Association Administrative/Clerical/Engineering Unit ("MOU"), related to seniority and bumping rights with layoffs.

FISCAL ANALYSIS:

None.

PREVIOUS ACTION:

Council approved the terms of the Severance Agreement for the Escondido City Employees' Association by Resolution No. 2010-49 on March 24, 2010.

BACKGROUND:

On March 15, 2010, ECEA and the City's Management Team met to discuss the impacts of the proposed layoffs in the Code Enforcement Division. During this meeting, ECEA and the City's Management Team came to an agreement on the severance package for the job classifications proposed to be laid off. This agreement delineated the layoff process per the MOU and provided a list of those individuals who were to be laid off, as well as what bumping rights they could exercise based on their previous employment with the City. Prior to an agreement being reached, ECEA set forth its position that the City's Rules and the MOU required part-time employees to be laid off prior to the full-time employees. Two of the affected employees also submitted requests to bump to part-time positions.

The City's Management Team rejected ECEA's interpretation of the City's Personnel Rules and the MOU and explained that part-time employees were not covered by the City's Personnel Rules, and, therefore, were not a factor in the layoff process related to seniority or bumping rights by a full-time employee. After the City's Management Team made its position clear, ECEA's attorney agreed to the terms of the severance package by signing the proposed terms of the severance package. (See Attachment A.) The severance package was approved by the City Council on March 24, 2010. (See Attachment B.) To date, all ECEA employees affected by the layoffs have received severance payments.

After agreeing to the terms of the severance agreement, ECEA filed a General Grievance on March 17, 2010, requesting a grievance appeal conference with Management. (See Attachment C.) This conference was held on March 29, 2010, with City Manager Clay Phillips. Ms. Lauren Arens appeared on behalf of ECEA.

On April 1, 2010, City Manager Clay Phillips responded to ECEA's General Grievance and found that the City complied with the City's Personnel Rules and the MOU. (See Attachment D.) Of the six employees to be laid off, two found other employment with the City and one chose to bump down and demote to a lower classification previously held. Thus, this grievance involves the status of the three remaining positions at issue.¹

ECEA argued that the City violated the applicable MOU and Personnel Rules relating to seniority in layoffs and bumping rights because it improperly differentiated between part-time and full-time Code Enforcement employees.

ECEA grieves the City's application of City Personnel Rule No. 12 which is incorporated into the MOU and states, in relevant part, as follows:

Whenever it becomes necessary to reduce the number of employees in any classification, the order of layoffs shall be as follows:

- (1) Employees with provisional status;
- (2) Employees with probationary status;
- (3) Employees with permanent status in order of seniority, the employee with the shortest service in total City service in any classification is to be laid off first.

Employees to be laid off in a particular classification have the right to demote to a lower job previously performed for which they meet the minimum qualifications and the employee is capable of performing the essential functions of the position.

"Provisional Employee" is defined in the City's Personnel Rules as "an employee who possesses the minimum qualifications established for a particular class and who has been temporarily appointed in a

¹ It should be noted that since the filing of ECEA's grievance an affected employee has service retired with CalPERS.

position in that class in the absence of available eligibles." This is a full-time/regular, budgeted position filled with a provisional employee until a full-time/regular employee is hired. Part-time/temporary employees are *not* included or defined by the City's Personnel Rules and therefore not considered during the layoff process.

Further, the job classification for a full-time Code Enforcement Officer is not the same as the job classification for a part-time Code Enforcement Officer. The classification for a part-time Code Enforcement Officer is Department Specialist/Code Enforcement Officer I.

Based on the foregoing, Mr. Phillips denied the grievance and determined that the City has correctly and appropriately followed the administrative process related to seniority and layoffs detailed in the City's Personnel Rules and the MOU.

On April 15, 2010, ECEA filed a written appeal of the City Manager's denial of ECEA's general grievance and requested the matter be heard by the City Council. (See Attachment E.) ECEA requests the following remedies:

1. Lay off employees with identical job duties (part-time vs. full-time) in order of seniority giving preference to the most senior employees irrespective of whether those employees are part-time or full-time; or
2. Allow senior full-time employees the right to bump part-time employees who perform the same duties and responsibilities as the senior employees.

It is respectfully requested after your consideration of the documentation, statements by ECEA and the City Management Team, that you affirm the City Manager's denial of ECEA's general grievance.

Respectfully submitted,



Gail Sullivan
Deputy City Manager



Sheryl Bennett
Director of Human Resources

Attachments

- A. 2010 Meet & Confer Process - Proposed Terms of Severance Package
- B. Resolution No. 2010-49
- C. March 17, 2010 – Letter from Mr. Hayes to Mr. Phillips
- D. April 1, 2010 – Letter from Mr. Phillips to Mr. Hayes
- E. April 15, 2010 – Letter from Mr. Hayes to Mr. Phillips (*Attachments on file with the City Clerk*)

March 15, 2010

Attachment A

**City of Escondido
2010 Meet-and-Confer Process – Reduction in Force**

**Escondido City Employees Association
Administrative Clerical and Engineering (ACE) and Supervisory Bargaining Units**

Management Proposal #2 - Impact of Reduction in Force

The City intends to restructure certain City services with a resulting reduction in workforce of those employees currently employed in specific classifications.

The City intends to make such workforce reductions effective with the last day of work on April 1, 2010.

Considering the timing for the anticipated workforce changes, and considering that the impact of such changes is not within the scope of current negotiations to amend the Memorandum of Understanding with the ACE and Supervisory Bargaining Units, the City offers the following proposal:

1. Layoffs will be undertaken consistent with the current language in both ACE and Supervisory MOUs:

Whenever it becomes necessary to reduce the number of employees in any classification, the order of layoff shall be as follows:

- (1) Employees with provisional status.
- (2) Employees with probationary status.
- (3) Employees with permanent status in order of seniority, the employee with the shortest service in total City service in any classification is to be laid off first.

In the event that two or more employees have identical total City service seniority, the order of layoff will be determined by length of continuous service in the affected classification.

Whenever two or more employees have identical service in the affected classification, the order of layoff shall be determined by the City Manager on the basis of performance.

Employees to be laid off in a particular classification have the right to demote to a lower job previously performed for which they meet the minimum qualifications and the employee is capable of performing the essential functions of the position.

The name of each laid off employee shall be placed on a reemployment list and shall be given the first opportunity to return to regular employment in reverse order of layoff.

March 15, 2010

2. Employees who choose to demote (bump) to a classification for which they are eligible must inform the Director of Human Resources by noon on March 18, 2010.
3. Employees terminated due to layoff will receive severance compensation according to the following schedule:

Years of City Service	Salary Severance
1-3 years	Eighty (80) hours (2 weeks)
4-9 years	One hundred twenty (120) hours (3 weeks)
10-14 years	One hundred sixty (160) hours (4 weeks)
15+ years	Two hundred (200) hours (5 weeks)

Employee service time will be rounded up to the next full year

4. Employees on the layoff list that decide to accept a Cal PERS service retirement on or before April 1, 2010, will not receive salary severance.
5. Employees will receive payoff for all eligible accumulated leaves at the time of severance.
6. Medical and Dental benefits will be provided through April 2010. The City will participate in the cost of COBRA conversion for those eligible employees under Federal statutory requirements through December 31, 2010; City participation will be at the 65% level as required by current Federal law.
7. Employees from this layoff list re-hired by the City from the re-employment list within **eighteen** months will receive the following:
 - Restoration of seniority as to years of service with the City for the purpose of leave accrual and seniority for layoff purposes
 - Reinstatement of sick leave balance from the point of layoff from City service
8. Consistent with the current ECEA/ACE MOU, Article XL, and ECEA/SUPERVISORY MOU, Article XXVI, Section 3 – Management Right to Contract with Outside Vendors:

“The City will continue to accomplish work internally within the City workforce and assign such work among various City departments. When extra ordinary or specialty work must be accomplished, the City will seek

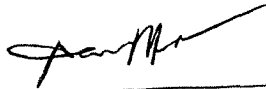
March 15, 2010

the most cost effective resources to accomplish such work either through temporary employees or outside professionals.

9. Employees who are to be laid off effective April 1, 2010, will have their Holiday Furlough deduction for "Memorial Day" (9 hours) analyzed, so they are not unduly charged for a holiday that they will not recognize. Employees on the City Hall Furlough must continue using their 8-hours from their Furlough Bank on the designated "Furlough Fridays" only.

TENTATIVE AGREEMENT

3-15-10



ECEA



CITY OF ESCONDIDO

RESOLUTION NO. 2010-49

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
APPROVING A SEVERANCE AGREEMENT
FOR THE ADMINISTRATIVE, CLERICAL
AND ENGINEERING BARGAINING UNIT
AND SUPERVISORY BARGAINING UNIT

WHEREAS, negotiating teams from the City of Escondido and the Administrative, Clerical and Engineering Bargaining Unit and Supervisory Bargaining Unit have been duly appointed and have conducted meet-and-confer sessions with respect to determining a severance agreement for the affected employees being laid off in these bargaining units; and

WHEREAS, it is the intent of the agreement to provide a severance package for those employees in the bargaining unit who are being laid off effective April 1, 2010; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the agreement.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. The City's negotiating team is authorized to execute, on behalf of the City, the terms of the agreement as set forth in Exhibit "A," attached to this resolution and incorporated by this reference.

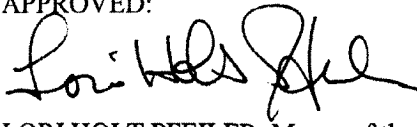
PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 24th day of March, 2010 by the following vote to wit:

AYES : Councilmembers: ABED, DANIELS, DIAZ, WALDRON, PFEILER

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



LORI HOLT PFEILER, Mayor of the
City of Escondido, California

ATTEST:



MARSHA WHALEN, City Clerk of the
City of Escondido, California

RESOLUTION NO. 2010-49

Resolution No. 2010-49
EXHIBIT A
Page 1 of 1

**City of Escondido
Meet and Confer Process
Escondido City Employees' Association
Administrative, Clerical and Engineering Bargaining Unit
Supervisory Bargaining Unit**

Severance Agreement

1. Employees terminated due to layoff will receive the equivalent in hours as salary compensation:

Years of City Service	Salary Severance
1-3 years	Eighty (80) hours (2 weeks)
4-9 years	One hundred twenty (120) hours (3 weeks)
10-14 years	One hundred sixty (160) hours (4 weeks)
15+ years	Two hundred (200) hours (5 weeks)

Employee service with the City of Escondido will be rounded up to the next full year.

Employees on the layoff list that decide to accept a Cal PERS service retirement on or before April 1, 2010, will not receive salary severance.

2. Employees will receive payoff for all eligible accumulated leaves at the time of severance. The final check is scheduled to be April 9, 2010.
3. Medical and Dental benefits will be provided through April 30, 2010.

The City will participate in the cost of COBRA conversion for those eligible employees under Federal statutory requirements through December 31, 2010; City participation will be at the 65% level as required by current Federal law.

4. Employees from this layoff list may be re-hired by the City from the reemployment list within eighteen months and will receive the following:
- Restoration of seniority as to years of service with the City for the purpose of leave accrual and seniority for layoff purposes.
 - Reinstatement of sick leave balance from the point of layoff from City service.

Attachment C

Hayes & Cunningham, LLP

DENNIS J. HAYES
JAMES J. CUNNINGHAM
ADAM E. CHAIKIN
LAUREN M. ARRENS
DONNA M. BUTLER
RICARDO OCHOA

ATTORNEYS AT LAW
3258 FOURTH AVENUE
SAN DIEGO, CALIFORNIA 92103

TELEPHONE: (619) 297-6900
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WEBSITE: <http://www.sdlaborlaw.com>

ADMINISTRATOR:
VIRGINIA WOOD

March 17, 2010

Via Email and Regular Mail

Clay Phillips
City Manager
City of Escondido
201 N. Broadway
Escondido, CA 92025

Re: Grievance Over Not Following Seniority In Layoffs And
Denying Bumping Rights To Code Enforcement Employees

Dear Mr. Phillips:

I am General Counsel for Escondido City Employees Association ("ECEA") and have been retained by ECEA to represent ECEA and the following individual employees who have been identified and are being laid off from their positions in code enforcement with the City of Escondido ("City"): Sandra Moore, Anna Villalobos, Stephen Jacobson, Russell Lane, Brian Gustafson and Erik Field (hereinafter "code enforcement employees").

Please consider this correspondence to be a grievance and an appeal of the decisions of the City, as announced by Gail Sullivan on March 15, 2010 regarding the seniority and bumping rights of code enforcement employees. In a meeting with ECEA, Ms. Sullivan, on behalf of the City, refused to comply with Rule 12 of the City's rules and regulations and Article 36 of the Memorandum of Understanding ("MOU") between the City and ECEA for the Administrative-Clerical-Engineering ("ACE") Unit.

Both the above-referenced provisions establish a system for all employees that give preference in layoffs to permanent employees with the most accrued seniority. The City has unlawfully circumvented and violated the City's civil service system and the ACE MOU by laying off senior code enforcement employees but keeping junior employees in the same classification, with the same job code, and who perform the same work but who have far less seniority. There exists no provision in the City's Rules or Regulations or in the ACE MOU that authorizes the City to take this action or to hire and retain junior employees with the same classification, job code and duties as senior employees who are laid off.

Please consider this correspondence to be a grievance and an appeal of the decisions of the City, as announced by Gail Sullivan on March 15, 2010, that denied the above-

Clay Phillips
March 17, 2010
Page 2

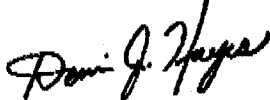
referenced employees' bumping rights to bump the junior employees who have the same job classification and job code who are junior. On March 15, 2010, two employees submitted requests to bump, Erik Field and Russell Lane. The City has denied these employees their bumping rights. Significantly, one such Code Enforcement Officer, Russell Lane, has previously worked the position to which he seeks to bump which provides further authorization for his displacement of the junior employee through the bumping process.

Finally, the reduction of force achieved by the elimination of the above-referenced code enforcement employees was actually undertaken to target ECEA President Russell Lane by termination, in retaliation for the exercise of his statutory rights under the Meyers-Milius-Brown Act, Gov. Code § 3500 *et seq.*; a claim that will be separately raised and adjudicated before the Public Employment Relations Board.

The remedies requested are: (1) to lay off employees in the same classification, with the same job code and who perform the same work, in order of seniority giving preference to the most senior employees irrespective of whether those employees are part-time or full-time; and (2) to allow senior full-time employees the right to bump part-time employees who have the same classification, the same job code and who perform the same duties and responsibilities as the senior employees.

Please contact my office upon your receipt of this grievance appeal to schedule a grievance appeal conference.

Very truly yours,



Dennis J. Hayes
Attorney at Law

cc: Karen Tatge (email only)



Attachment D

Clay Phillips
City Manager
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4631 Fax: 760-839-4578

April 1, 2010

Sent Via Email and USPS

RECEIVED

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City Attorney's Office

Mr. Dennis Hayes, Attorney
Hayes and Cunningham, LLP
3258 Fourth Avenue
San Diego, Ca 92103

*Re: General Grievance of the Escondido City Employees' Association (ECEA) regarding
Seniority in Layoffs and Bumping Rights*

Dear Mr. Hayes:

The following correspondence is the City's response to the ECEA's General Grievance Over Not Following Seniority in Layoffs and Denying Bumping Rights to Code Enforcement Employees.

Procedural History:

On March 15, 2010, the ECEA and the City's Management Team came to an agreement on the severance package for laid off employees. This agreement delineated the layoff process per the Memorandum of Understanding – Escondido City Employees' Association Administrative/Clerical/Engineering Unit ("MOU"), and provided a list of those individuals who were to be laid off, as well as what bumping rights they could exercise based on their previous employment with the City. During this meeting, the Management Team explained that part-time employees are not covered by the City's Personnel Rules and Regulations. The severance package was ultimately approved by the City Council on March 24, 2010.

Despite agreeing to the terms of the severance agreement, ECEA filed a General Grievance on March 17, 2010 requesting a "grievance appeal conference" with Management. This conference was held on March 29, 2010.

The City Complied with the MOU and Personnel Rules and Regulations:

Of the six employees who were to be laid off, two found other employment within the City (Gustafson and Hippert), and one chose to bump down/demote to a lower classification previously held (Moore). Thus, only the status of the three remaining employees remains at issue.

As a result of the general grievance meeting, it now appears that ECEA's only concern is that the City violated the applicable MOU and Personnel Rules relating to seniority in layoffs and bumping because it improperly differentiated between part-time and full-time Code Enforcement employees. As we have stated previously, the City's layoff process took the seniority of each affected employee into consideration. However, within the City's classification plan, the part-time and full-time Code Enforcement employees have separate classifications and different job codes. Both the ACE and Supervisory Bargaining Units MOUs provide:

Dennis Hayes
April 1, 2010
Page 2

Whenever it becomes necessary to reduce the number of employees in any classification, the order of layoff shall be as follows:

- (1) Employees with provisional status.*
- (2) Employees with probationary status.*
- (3) Employees with permanent status in order of seniority, the employee with the shortest service in total City service in any classification is to be laid off first.*

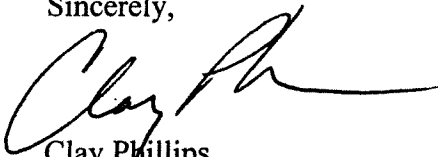
Employees to be laid off in a particular classification have the right to demote to a lower job previously performed for which they meet the minimum qualifications and the employee is capable of performing the essential functions of the position.

Part-time/temporary employees are not included or defined within the City's Personnel Rules and Regulations, and therefore were not part of the layoff process.

Conclusion:

As discussed above, the City has correctly and appropriately followed its administrative process related to seniority and layoffs and has complied with the governing MOU and Personnel Rules and Regulations. The City therefore denies your grievance. I will not implement any changes to the layoff order or the bumping rights of the affected employees within the Code Enforcement Division. This correspondence is not intended to reflect all of the reasons for this denial, but rather outline the principle reasons underlying our decision. If you are not satisfied with this outcome, you may submit a request for hearing before the City Council within fifteen (15) days.

Sincerely,



Clay Phillips
City Manager

Cc : Gail Sullivan, Deputy City Manager
Sheryl Bennett, Director of Human Resources
Jennifer McCain, Assistant City Attorney
Christina Milligan, Deputy City Attorney
Matilda Hlawek, Human Resources Manager
Ralph Ginese, ECEA President

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APR 19 2010

Hayes & Cunningham, LLP

DENNIS J. HAYES
JAMES J. CUNNINGHAM
ADAM E. CHAIKIN
LAUREN ARENS
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SAN DIEGO, CALIFORNIA 92103

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WEBSITE: <http://www.sdlaborlaw.com>

ADMINISTRATOR:
333

April 15, 2010

Attachment E

Via Email at cphillips@escondido.org
& Overnight Mail

Clay Phillips
City Manager
City of Escondido
201 North Broadway
Escondido, CA 92025

RE: *General Grievance of the Escondido City Employees' Association ("ECEA")
Regarding Seniority in Layoffs and Bumping Rights*

Dear Mr. Phillips:

Please be advised that I am General Counsel for the Escondido City Employees' Association ("ECEA") and have been retained by ECEA to represent it in the above-referenced matter. On March 17, 2010, ECEA filed a general grievance pursuant to the terms of the Memorandum of Understanding ("MOU") for the Administrative/Clerical/Engineering ("ACE") Unit and the City's Personnel Rules. Thereafter, the City denied ECEA's general grievance by letter dated April 1, 2010. This letter serves as an appeal of the City's denial of ECEA's general grievance and request for a hearing before the City Council.

The general grievance and this appeal are based on the following facts: In a meeting with ECEA which took place on March 15, 2010, Gail Sullivan, on behalf of the City, announced that the City refused to comply with Rule 12 of the City's Rules and Regulations and Article 36 of the ACE MOU. Both of the above-referenced provisions establish a system for all employees that give preference in layoffs to permanent employees with the most accrued seniority. The City has unlawfully circumvented and violated the City's civil service system and the ACE MOU by laying off senior code enforcement employees but keeping junior employees, with the same job description, and who perform the same work but who have far less seniority. There exists no provision in the City's Rules and Regulations or in the ACE MOU that authorizes the City to take this action or to hire or retain junior employees with the identical job duties as senior employees who are laid off.

On March 15, 2010, two employees submitted requests to bump the junior employees who have the identical job duties who are junior: Russell Lane and Erik Field. The City has denied these employees their bumping rights. Significantly, one Code Enforcement Officer, Russell Lane, has previously worked in the position to which he seeks to bump which provides further authorization for his displacement of the junior employees through the bumping process.

Finally, the reduction in force achieved by the elimination of the above-referenced code enforcement employees was actually undertaken to target ECEA President Russell Lane by

terminating him, in retaliation for the exercise of his statutory rights under the Meyers-Milias-Brown Act ("MMBA"; Government Code Sections 3500, *et seq.*); a claim that will be raised and adjudicated before the Public Employment Relations Board.

The remedies requested are: (1) to lay off employees in with identical job duties (part time vs. full time) in order of seniority giving preference to the most senior employees irrespective of whether those employees are part-time or full-time; or (2) to allow senior full-time employees the right to bump part-time employees who perform the same duties and responsibilities as the senior employees.

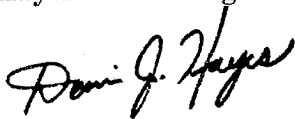
The following documentation is enclosed which supports ECEA's appeal and request for hearing before the City Council:

1. 2009-2010 Memorandum of Understanding – Escondido City Employees' Association Administrative/Clerical/Engineering Unit.
2. City of Escondido – Personnel Rules and Regulations – Administration
3. City of Escondido – Personnel Rules and Regulations – General Employees
4. City of Escondido – PeopleSoft HRMS/Payroll – Compensation Plan as of 3/15/2010
5. City of Escondido's Part-Time Hourly Compensation Plan
6. ECEA's March 17, 2010 General Grievance
7. Job Descriptions for the following classifications: Code Enforcement Assistant I/II; Code Enforcement Officer I/Code Enforcement Officer II;
8. ACE Group / General Fund – Identified Layoffs (Code Enforcement) dated 3/4/2010
9. Order of Layoffs – Definitions (Per the Personnel Rules)

Please be advised that ECEA intends to supplement its documentation upon receipt of the response from the Request for Information which is submitted concurrently with this appeal. Please contact my office to provide a date for the City Council hearing.

Very truly yours,

Hayes & Cunningham, LLP



Dennis J. Hayes
Attorney

Enclosures

cc: Gail Sullivan, Deputy City Manager (w/o encls.)
Sheryl Bennett, Director of Human Resources (w/o encls.)
Jennifer McCain, Assistant City Attorney (w/o encls.)
Christina Milligan, Deputy City Attorney (w/o encls.)
Client (w/o encls.)