

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: May 16, 2008

TO: Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: The City Charter, California Government Code, and Council Policy 300-06
Require that the Council Reach a Resolution on Impasse by Majority Vote

In a memorandum dated May 15, 2008, the City Attorney advised that because the motions to approve the Mayor's last, best, and final offer to recognized labor organizations failed to receive five affirmative or negative votes, the matter must be continued as unfinished business to the next Council meeting on May 19, 2008. This is not a discretionary act to place this item on this agenda. The Mayor does not have the authority in this situation to control whether the Council continues discussions on these issues. The Charter, Government Code, and Council Policy 300-06 require that the Council reach a resolution on impasse by majority vote.

The Council has a duty under the Charter to make decisions. A 4-4 vote does not meet that duty. Charter section 15 states: "Except as otherwise provided herein *the affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote. . .*" Accordingly, items that do not receive at least five votes must be continued to be discussed at the next Council meeting.

The City is required to follow its own impasse procedures. Cal. Gov't Code § 3505. Those procedures provide that "If no agreement is reached at an impasse meeting, impasses *shall then be resolved* by a determination by . . . the City Council after a hearing on the merits of the dispute." Council Policy 300-06, section VII., B. (emphasis added). Because the votes on each motion were 4-4, the impasses were not resolved.

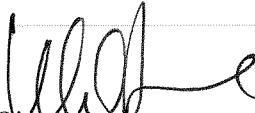
Government Code section 3505.4 provides that, if after the parties negotiate and "an impasse is reached between the public agency and the recognized employee organization, *and impasse procedures, where applicable, have been exhausted*", a public agency may implement its last, best, and final offer. In this case, impasse procedures have not been exhausted and the matter remains unresolved.

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The deadline for posting the agenda for the meeting on May 19, 2008 has passed. Accordingly, the agenda for this item to be heard on May 20, 2008, must be posted by 5:00 p.m. today.

MICHAEL J. AGUIRRE, City Attorney

By


City Attorney

MJA:als

cc: Elizabeth Maland, City Clerk
Lisa Briggs, Policy Advisor to Mayor Jerry Sanders
Scott Chadwick, Labor Relations Director