

William C. Douglas

September 1, 2011

Lemoore City Council
119 Fox Street
Lemoore, CA 93245

Re: GASE Impasse Report

The General Association of Service Employees (GASE) is the recognized employee representative for Lemoore's non-safety, non-management employees. The Memorandum of Understanding (MOU) between GASE and the City expired June 30, 2011, and on July 12, 2011, even though GASE had not supplied the City with a Last, Best and Final Offer nor received one from the City, GASE notified the State Mediation and Conciliation service that impasse had been achieved in the negotiations of a successor to that MOU.

I, William C. Douglas, and Lemoore Administrative Analyst, JP Prichard, have represented the City in these negotiations and provide the following synopsis of the process, delineation of the unresolved issues from our perspective and City Administration's recommendation regarding further action.

Process:

Five MOU negotiation sessions have been held, occurring on the following dates: May 11, May 26, June 2, June 15, and June 29. While there is no doubt that Impasse has been achieved, the path that led to Impasse was somewhat unusual and, therefore, I have provided the chronology, as follows: (Note: Copies of all documents referenced are attached and numbered to coincide with numbers in following list.)

1. May 11, 2011 - First negotiation session - GASE presented negotiation demands, in which they sought a one year extension of the 2008-2011 MOU with the addition of additional holiday time off;
2. May 26 – Second session – City presented “City Proposal #1”, in which the City proposed a 3-year term, with significant changes in overtime calculation and employee contributions to retirement and health insurance;
3. June 2 – Third session – GASE verbally rejected City #1 – other possibilities were discussed;
4. June 15 – Fourth session – GASE presented “Counter Offer #1” – City responded with “City Proposal #2 (4A) – In this session, tentative agreement was achieved on two issues, (1) the establishment of a second tier of retirement for employees hired on or after January 1, 2012, and (2) a 70%/30% split of costs associated with mediation (Personnel Guidelines Section 10.13);
5. June 29 – Fifth and final session – GASE presented “Counter Offer #2” in which the union substantially increased their demands proposing an increase of 8% in salary and asking for an additional eight hours of holiday time off. The City team charged the GASE representatives with engaging in regressive, bad faith bargaining, and told GASE the City would consider filing an unfair labor practice charge with the California Public Employee Relations Board (PERB);
6. June 29 – GASE attorney, Barry Bennett, sent a letter to Jeff Britz, City Manager, complaining about the threat made by the City team regarding the filing of a PERB complaint;
7. June 30 – City “Final Offer” was sent via email to GASE representatives Janie Venegas and Chuck Riddle. No response or acknowledgement was received in return;
8. July 12 – Email sent to Janie Venegas and Chuck Riddle asking for meeting dates/times. No response received;
9. July 12 – City copied on letter sent by GASE attorney, Katwyn De La Rosa, to State Mediation and Conciliation Service requesting Impasse mediation. ; (Note: First notice that the City received that GASE was declaring Impasse; Mediation is not required by the City rules governing the meet and confer process.);

10. July 27 – Letter from Jeffrey Kuhn, Acting City Attorney, providing the City’s agreement to enter into Mediation, with the caveat that the process be completed by August 15 and that costs would be split evenly;
11. July 28 – Letter from GASE attorney, Katwyn De La Rosa, accepting terms of Mr. Kuhn’s letter, subject to scheduling issues;
12. August 3 – Mediation confirmed for August 18, 2011, 9:00 AM, at Lemoore Council Chambers;
13. August 12 – Email with GASE’s Last, Best & Final offer, modifying their June 29 position;
14. August 17, 4:13 PM – Email received from Marci Nabors, Secretary to Barry Bennett, verifying that the negotiations were at Impasse;
15. August 17, 4:46 PM – Email received from Marci Nabors, canceling Mediation session scheduled for August 18 due to “urgent ... personal issue” encountered by GASE president, Chuck Riddle;
16. August 18 – Email sent by Bill Douglas to Barry Bennett via Marci Nabors, with copies to Janie Venegas and Chuck Riddle, agreeing that the parties are at impasse and announcing the setting of Impasse Hearing at City Council meeting of September 6, 2011, and offering “make-up” mediation dates of August 29, 30, or 31. No response has been received to date; and,
17. August 26 – Email from Bill Douglas to Barry Bennett via Marci Nabors, with copies to Janie Venegas and Chuck Riddle, reminding of Impasse Hearing date/time and document submission timeline.

The City of Lemoore’s Employer-Employee Relations Resolution (Res. 2010-39, “EERR”) provides in section 20 “Initiation of Impasse Procedures”,

“If the meet and confer process has reached impasse ..., either party may initiate impasse procedures by filing with the other party a written declaration of impasse...”

c. Both parties shall make a written report of items and issues in dispute to the City Council. The City Council’s action on items and issues in dispute shall be final and binding.”

In the attached copies of the City’s and the union’s Last, Best and Final Offers, you will see the following issues upon which we have achieved **tentative agreement** (subject to achieving complete agreement on an MOU):

1. Retirement - Tier 2, 2% at age 60, will be established for new employees hired on or after January 1, 2012; and
2. Section 10.13 of the Personnel System Guidelines will be amended, effective July 1, 2011, to include the following for employees represented by GASE:

B. The cost of the Mediator shall be split with 70% to be paid by the City and 30% to be paid by the appellant. Each party shall bear its own costs relating to mediation including, but not limited to, witness fees, transcriptions and attorney fees.

Impasse Issues:

The following **City Proposals** have been rejected by GASE:

1. Term – Three years to expire June 30, 2014
2. Overtime – Effective upon adoption by the Lemoore City Council, paid leave time (vacation, sick leave, CTO, and holiday time off) will no longer be considered hours worked for the purposes of calculating overtime compensation.
3. Retirement – Effective on the first payday following adoption by the Lemoore City Council, all employees will pay portions of the Employee Contribution to retirement equal to:
 - a. The amount of all future increases in the Employer’s contribution to retirement; initial deduction to become effective on the first payday following adoption by the Lemoore City Council, and subsequent contribution increases (if applicable) effective on July 1, 2012, and July 1, 2013; plus,
 - b. 1%, effective on the first payday following adoption by the Lemoore City Council;

- c. For the three-year term of this agreement, said combined contributions (a plus b) will not exceed a total of 4% of pay.
4. Health Benefits - Effective on the first payday following adoption by the Lemoore City Council, the City's contributions to health insurance will be fixed at: \$358.04 – individual , \$684.57 – two party, and \$884.70 - family;
 - a. Any future increases will be paid by participating employees.
5. Holidays – The only difference in the parties' positions is the timing of the increase in holiday time. The City has proposed that Christmas and New Year's Eve holidays be increased to full 8-hour holidays in 2013, while GASE has proposed that the increase occur in 2012.

The following **GASE Proposals** have been rejected by the City:

1. Term – 2½ years to expire December 31, 2013
2. Salary – 6% salary increase, (as follows)
 - a. 2% effective on the first payday following adoption by the Lemoore City Council;
 - b. 2% effective July 1, 2012; and
 - c. 2% effective July 1, 2013.
3. Retirement – No change in the employee contribution structure.
4. Health Benefits – No change in the contribution structure.
5. Holidays – At noted above, the only difference in the parties' positions is the timing of the increase in holiday time.

Cost Difference:

The cost difference between the City and GASE positions for the first year alone is \$130,247, as the City's Last, Best and Final include compensation concessions of \$66,324 (-2.05%), and GASE's Last, Best and Final include compensation and benefit increases of \$63,923 (+1.97%).

Discussion:

We anticipate GASE will present their position and arguments on Tuesday evening. Our understanding of GASE's objection to the City's proposals is based on their perception that the City's current financial position does not warrant shifting benefit costs to the employees. The fact that the City, due to years of conservative budgeting, is not "broke", nor seriously close to "broke", has led GASE to believe the proposals to shift benefit costs to employees is unjustifiable. Please note that GASE was invited to produce a "written report of items and issues in dispute [for] the City Council" as required by the EERR impasse procedures, but none has been received to date.

The City's position is that maintaining the future financial health of the City justifies placing limits on the volatile cost growth associated with retirement and health benefits. Further, that as a matter of sound public policy, and in response to labor market trends, employees should be required to share in the cost of retirement.

Options:

City Administration believes that your Council has the following options:

1. You can agree to modify the City's position on any or all of the impasse issues and direct City Administration to return to the bargaining table to resolve the details of an agreement; or
2. You can reject the union's positions and order the implementation of those changes in terms and conditions of employment that are contained in City's Last, Best and Final Offer; (*Note: California law provides that only those matters that are proposed to take effect in the first year [July 1, 2011 through June 30, 2012] can be imposed.*); or
3. You may accept the union's positions as outlined in GASE's Last, Best and Final Offer; or

4. You can take no action and allow the City to continue to operate under the current terms and conditions of employment.

Recommendation:

City Administration recommends Option #2, unilateral implementation of the changes in terms and conditions of employment that are contained in the first year of the City's Last, Best and Final Offer. This one-year imposition would include the following:

1. Overtime – Effective upon adoption by the Lemoore City Council, paid leave time (vacation, sick leave, CTO, and holiday time off) will no longer be considered hours worked for the purposes of calculating overtime compensation.
2. Retirement – Effective October 1, 2011, all employees will pay portions of the Employee Contribution to retirement equal to:
 - a. The amount of the FY 2011/2012 increases in the Employer's contribution to retirement; initial deduction to become effective on the first payday (October) following adoption by the Lemoore City Council. As the Employer contribution rate went from 9.289% in FY2010/11 to 10.326% in 2011/12, this increase equals 1.037% of salary; plus,
 - b. An additional 1%, effective on the first payday (October) following adoption by the Lemoore City Council (for a total of a + b equaling 2.037% of salary) ;
 - c. Tier 2, 2% at age 60, will be established for new employees hired on or after January 1, 2012 (or as soon as practical, whichever is later).
3. Health Benefits - Effective on the first payday following adoption by the Lemoore City Council, the City's contributions to health insurance will be fixed at: \$358.04 – individual, \$684.57 – two-party, and \$884.70 – family. Any future increases will be paid by participating employees.
4. The cost of the Mediation shall be split with 70% to be paid by the City and 30% to be paid by the appellant. Each party shall bear its own costs relating to mediation including, but not limited to, witness fees, transcriptions and attorney fees.
5. All other terms and conditions will remain unchanged.

We stand ready to answer any questions your Council may have and take whichever action or direction you choose.

Yours truly



William C. Douglas

Labor Relations Consultant

Attachments