



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File this charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original charge in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

If so, Case No.

NO

1. CHARGING PARTY:

EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: San Luis Obispo City Employees Association (SLOCEA)

b. Mailing address: c/o The Law Office of Tracy J. Jones, PC, 4032 Valeta St. #330, San Diego, CA

c. Telephone number: (619) 228-9627

d. Name and title of person filing charge: Tracy J. Jones, Attorney

E-mail Address: tracy@joneslaborfirm.com

Telephone number: (619) 228-9627

Fax No.:

e. Bargaining unit(s) involved: General Unit

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: City of San Luis Obispo

b. Mailing address: 990 Palm Street

c. Telephone number: (805) 781-7251

d. Name and title of agent to contact: Nickole Domini, Human Resources Director

E-mail Address: ndomini@clocity.org

Telephone number: (805) 781-7251

Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No **6. STATEMENT OF CHARGE**

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- A Covered Public Utilities Code Transit Employer (BART (Pub. Util. Code, § 28848 et seq.), Orange County Transportation Authority (Pub. Util. Code, § 40000 et seq.), and supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560 et seq.)).
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:
Gov. Code sections 3505, 3506.5(b), (c); PERB Reg. 32603(b), (c)
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (**a copy of the applicable local rule(s) MUST be attached to the charge**):
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

The City has committed unfair labor practices in failing to meet and confer with SLOCEA in good faith and direct dealing with SLOCEA members by issuing false and misleading communications designed to trick SLOCEA members into voting to accept the City's last, best and final offer.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on August 31, 2022
(Date)

at San Luis Obispo, CA
(City and State)

Dale Strobridge

(Type or Print Name)

DocuSigned by:

Dale E. Strobridge

(Signature)
CAA8F547088A43B...

Title, if any: SLOCEA's Labor Relations Consultant

Mailing address: P.O. Box 3914
San Luis Obispo, CA 93403-3914

Telephone Number: (805) 461-5773 E-Mail Address: sba1consulting@aol.com

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of San Diego, State of California. I am over the age of 18 years. The name and address of my Residence or business is The Law Office of Tracy J. Jones, PC, 4032 Valeta St. #330, San Diego, CA 92110

On August 31, 2022, I served the Unfair Practice Charge and (Date) (Description of document(s))

Position Statement in Case No. (Description of document(s) continued) PERB Case No., if known

on the parties listed below by (check the applicable method(s)):

- [x] placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
[] personal delivery;
[x] electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Nickole Domini, Human Resources Director City of San Luis Obispo 990 Palm Street San Luis Obispo, CA 93401-3249 ndomini@slocity.org
Che Johnson Liebert Cassidy Whitmore 5250 N. Palm Avenue, Ste. 310 Fresno, CA 93704 cjohanson@lcwlegal.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 31, 2022, at San Diego, CA (Date) (City) (State)

Tracy J. Jones

Tracy Jones (Signature)

(Type or print name)

(Signature)

THE LAW OFFICE OF TRACY J. JONES, PC

4032 Valeta Street, Unit 330, San Diego, California 92110
Cell Phone: (913) 488-1312; Landline: (619) 228-9627
Email: tracy@joneslaborfirm.com
California Bar No. 263632

August 31, 2022

Via E-filing

Public Employment Relations Board
Los Angeles Regional Office
425 W. Broadway, Suite 400
Glendale, CA 92104-4118

Re: SLOCEA v. City of San Luis Obispo
POSITION STATEMENT IN SUPPORT OF UNFAIR PRACTICE CHARGE

Dear PERB,

I represent Charging Party San Luis Obispo City Employees Association (“SLOCEA”). SLOCEA submits the following position statement in support of its unfair practice charge against the Respondent City of San Luis Obispo (“City”).

I. INTRODUCTION AND EXECUTIVE SUMMARY

The City has committed unfair labor practices by (A) refusing to meet and confer with SLOCEA in good faith as required by Government Code section 3505 and (B) interfering with SLOCEA’s exercise of its rights under Government Code section 3504.5 by direct dealing with SLOCEA members. (PERB Reg. 32603(b), (c).)

In the process of attempting to negotiate a successor Memorandum of Agreement (“MOA”), based on the totality of the circumstances, the City engaged in surface or bad faith bargaining as demonstrated by the following:

- (1) The City foreclosed retroactivity to punish SLOCEA for supposedly delaying starting negotiations;
- (2) The City’s position on the ground rules proposals was unjustifiably and maliciously intractable;
- (3) The City took inconsistent positions on the immediacy of equity adjustments;
- (4) The City made false and misleading statements to SLOCEA members in order to direct deal, undermine union support, and trick members into voting to adopt the City’s Last Best and Final Offer (“LBFO”);

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- (5) The City's claimed quite early in negotiations that it will not implement its LBFO after impasse procedures are exhausted; and
- (6) The City prematurely rushed to impasse.

SLOCEA has provided sufficient facts to support a *prima facie* charge and PERB should issue a Complaint to challenge and remedy the City's unlawful conduct detailed herein.

II. FACTUAL BACKGROUND

A. Overview of the City of San Luis Obispo

The City employs approximately 450 full-time, regular staff. The City has an annual general fund budget of \$108.6 million. It is run by City Manager Derek Johnson and the governing body consists of a Mayor and four City Councilmembers. The City's chief negotiator is Che Johnson, an attorney with Liebert Cassidy Whitmore ("LCW"). This is Mr. Johnson's first negotiation on behalf of the City with SLOCEA, although his predecessor, Rick Bolanos was also with LCW. Human Resources Director Nickole Domini also leads the City's negotiation team. She has participated in the City's negotiations with SLOCEA twice before, but this is her first contract negotiation since being promoted to Human Resources Director.

B. Description of SLOCEA

SLOCEA represents a bargaining unit consisting of approximately 182 positions, which is forty percent of the City's regular, full-time workforce. There are approximately 168 SLOCEA members primarily due to unfilled positions in the unit. SLOCEA members work a variety of positions that enable basic City services to function, including in accounting/administrative, building and codes enforcement, engineering, maintenance, parking, parks, transit/transportation, and water/wastewater.

SLOCEA's chief negotiator is Dale Strobridge. He has been negotiating labor agreements with the City for 40 years. He has negotiated with the City on behalf of SLOCEA for the past 12 years. I have been General Counsel for SLOCEA for the past five years, but was largely not present for negotiation sessions between the Parties. SLOCEA's President Ryan Dale has also been central to negotiations and has been a member of SLOCEA's negotiation teams for the past several contract cycles.

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C. The City Requires SLOCEA's Sacrifices in Lean Years, But Does Not Share Prosperity in Times of Plenty

The City's revenue decreased during the 2007-2009 economic recession. During that timeframe, SLOCEA worked with the City and authorized a pay cut of approximately eight percent (8%) of total compensation for the entire bargaining unit. SLOCEA continued to work with the City as it recovered by agreeing to MOAs that contained no across the board salary increases. In the preamble to the January 1, 2015-June 30, 2016 MOA, the City even recognized SLOCEA's sacrifice in stating: "...the SLOCEA employees have demonstrated sensitivity to the fiscal challenges facing the City for several years by agreeing to no across the board salary increases (e.g. "cost of living" increases) since December 2010." (MOA 2015-16, p. 1.)

SLOCEA was able to negotiate back the cuts it accepted, but it was not until July 1, 2017 that SLOCEA members were taking home the same salary they made in 2010. Meanwhile, between 2010 and 2017, the cost-of-living for the City of San Luis Obispo increased approximately 21.8%¹. By the end of the 2018-19 MOA, SLOCEA's members had gone nearly a decade without any net increase in salary due to the cost-of-living outpacing compensation increases.

Negotiations for the 2019-2022 MOA were difficult. The Parties reached an agreement only after declaring impasse, mediating and completing two days of a factfinding hearing. SLOCEA went 17 months without a contract and was forced to accept salary increases of only 4%, 1.5% in December 2020 and 2.5% July 2021 and a one-time non-PERSable payment of \$1,500.

Part of the City's justification for minimal increases during the last bargaining cycle was the unpredictability of COVID-19 and relief funding. However, since mid-2020 the City has obtained significant financial benefits from COVID-19 relief funds (\$13,564,467) and has realized substantial increases in tax revenue due to increased consumer spending, tourism, and property values (up 25%). The City has come out of pandemic stronger financially than even the best projections.

D. The City Routinely Pushes SLOCEA to Take Over Part of its CalPERS Employer Contribution

A notable feature of all of the negotiations cycles since approximately 2010 is the City's insistence that SLOCEA take over a percentage of the employer's CalPERS obligations. Several of the City's bargaining units have accepted similar CalPERS cost-shifting proposals and the City wants SLOCEA to do the same. However,

¹ All cost-of-living references in this Position Statement are to the Consumer Price Index ("CPI-U") for LA-Long Beach-Anaheim, California.

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SLOCEA members will not accept changing the contribution percentages for retirement, which has been made clear every bargaining cycle.

III. STATEMENT OF FACTS SUPPORTING SLOCEA'S CHARGE

A. The City Commissioned a Compensation Study as Required in the MOA, But Attempted to Eliminate Committee Input In Contravention of the Parties' Past Practice

The City was required by the 2019-22 MOA to complete a compensation study prior to the start of negotiations for a successor agreement. Prior compensation studies had been produced collaboratively with comparator cities and included classifications being determined in advance by the City's Compensation Study Committee ("Committee"), which includes several SLOCEA members.

This bargaining cycle, the process started with the City retaining Geoffrey Rothman of Sloan, Sakai, Young & Wange, LLP to produce the study. The City provided Mr. Rothman instructions on what should be included in the study for nearly two months before the Committee even met. During the first Committee meeting, Mr. Rothman presented an overview of his planned methodology, which deviated significantly from the methodology historically used by the City. The planned study also included analysis of compensation of several classifications in the City's Management and Confidential units. SLOCEA objected to the Committee being excluded from the process in deviation with the City's past practice.

The City's initial position was that there was no requirement to meet and confer with the Committee and their role was merely advisory. However, ultimately, the City did implement some changes to the Study's parameters based on the Committee's recommendations. The study found that selected SLOCEA positions were at 9.8% below the median on average. The study was finalized on February 1, 2022 and presented to City employees on February 3, 2022.

The data used to create the study only went through October 2021. Since October 2021, several comparator cities have reached lucrative successor agreements that would skew the City's average disparity with the median much larger than 9.8%. Accordingly, SLOCEA has reservations about the methodology and results of the study, but ultimately, it has been relied on by both sides during negotiations.

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B. For Legitimate Reasons, SLOCEA Declined to Begin Negotiations Earlier Than Required by the MOA

Article 4 of the 2019-22 MOA states:

Parties agree that either the City or the Association can initiate negotiations no earlier than 120 days or later than 90 days prior to the expiration of the MOA. Negotiations shall begin within, but no later than, thirty (30) days from the date of receipt of the notice. Parties may by mutual agreement modify the date for commencement of negotiations.

That MOA expired on June 30, 2022, meaning the Parties could only deliver official notice of intent to bargain between March 2, 2022 and April 1, 2022.

On February 3, 2022, the City requested that SLOCEA agree to start negotiations earlier than the MOA required. SLOCEA declined because it was still analyzing the compensation study, which had only been presented to City employees hours earlier. Around that same timeframe, the City approached SLOCEA officials and told them, “we have money to throw at you this time around,” in the hope of encouraging SLOCEA to begin early. Around this time, the City first claimed that implementing equity adjustments as soon as possible was important to address the City’s retention and recruitment problems.

In February 2022, the City appropriated funds to implement equity adjustments for the City’s Management and Confidential units, which were decided based, in part, upon the results of the compensation study. SLOCEA wanted to know the details of the increases the City Council approved for the Management and Confidential units and informally requested them from Ms. Domini on February 8, 2022. She told SLOCEA’s President that she could share the details on February 16, 2022. However, on February 16, 2022, he followed up and Ms. Domini was only willing to share that the adjustments approved were “sizable.” The City never followed through on its agreement to share the Management and Confidential units’ equity adjustments prior to that information being made generally available to the public.

SLOCEA believes that the City wanted to start negotiations early to reach an agreement prior to the public announcement of the Management/Confidential unit adjustments.

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C. The City Forecloses Retroactivity Prior to Negotiations Even Beginning Because It Falsely Claimed SLOCEA Delayed Initiating Bargaining

On March 3, 2022, the 119th day prior to the expiration of the MOA, the City emailed SLOCEA again and officially requested to begin bargaining. Accordingly, as long as SLOCEA and the City had their first negotiations meeting by April 2, 2022, the Parties would satisfy the timeline required by Article 4 of the MOA. The City's email included several possible dates for the first negotiation session.

SLOCEA did not immediately respond to the City's request. SLOCEA required a couple of weeks to coordinate the schedules of its eight-person negotiation team. It also needed to secure authorization to negotiate and solicit input at its Executive Board and membership meetings both occurring on March 23, 2022. Ordinarily, these SLOCEA meetings are scheduled the last week of each month; but, SLOCEA moved them up to enable it to respond earlier to the City's request to negotiate. During this time, SLOCEA and the City were also busy negotiating a resolution to UPC, No. LA-CE-1570-M.

The City was aware of the reason for the timing of SLOCEA's response by virtue of informal text messages between Ms. Domini and SLOCEA's President on March 8, 2022 and March 17, 2022.

On March 14 and 19, 2022, the City sent follow up emails. On March 22, 2022, the City emailed SLOCEA again to follow up:

This email serves as the *fourth* attempt to schedule dates for negotiations. The City is hoping to put into effect terms and conditions that will benefit the SLOCEA bargaining unit; however, we will not be able to provide any retroactivity due to SLOCEA's delay in scheduling a meeting date.

In response, SLOCEA agreed to meet with the City on March 28, 2022, but objected to the City's exasperated tone, threats of a ULP, and characterizing SLOCEA as having delayed.

D. Negotiation Session 1 – March 28, 2022: City's First Proposal & Ground Rules Discussions

1. *The City Wanted to Alter the Ground Rules to Make Negotiations Public, Which Resulted in the Parties Abandoning Ground Rules Altogether*

The March 28, 2022 negotiations session included bargaining concerning ground rules. The Parties had been using substantially the same ground rules to negotiate

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successor MOAs for more than a decade. Negotiations had previously always been confidential, including prohibitions on explicitly sharing the contents of proposals with SLOCEA's members or the public prior to impasse. The City requested changes that would allow it to disclose the proposals to the public and communicate with the media throughout negotiations. The City told SLOCEA that it wanted this right because it intended to post the Parties' proposals on the City's website during negotiations.

The City said that posting the proposals was necessary so that it could use information about bargaining to attract candidates to alleviate its growing recruitment/retention problem. The City also falsely claimed that it had a free speech right under the U.S. and California Constitutions that it could not waive by agreeing to ground rules that prevented it from sharing proposals with the public during negotiations². The City conflated for its own purposes the *public's* right to information about what the government is doing. However, the public has no right to disclosure of proposals while labor negotiations are ongoing. (*See Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.)

Collective bargaining negotiations are intended to be private and closed to the public unless both parties agree otherwise. (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2019) 40 Cal.App.5th 241, 265.) "Negotiations sessions under the Meyers-Milias Brown Act (MMBA) (Gov. Code, § 3500 et seq.) are not required to be open to the public, but may be held in private. (61 Ops. Cal. Atty. Gen. 1, 5-6, 20 (1978) [because of the need to caucus and bargain in private, the Legislature did not intend to require "local agencies to do their labor bargaining in a fish bowl]" (*Id.*))

Courts and PERB have expressed a distaste for public disclosure of bargaining proposals, which they consider to be unproductive and likely to inhibit the free expression of ideas. (*County of Orange* (2018) PERB Dec. 2594-M, p. 30; *Gerwan Farming Inc., supra*, 40 Cal.App.5th at 275 (citing *Safeway Trails, Inc.* (1977) 233 NLRB 1078, 1081).) Ultimately, after both Parties exchanged correspondence about these principles and discussed them at four meetings, the Parties decided to proceed without an agreement on the ground rules.

2. *Details of the City's Proposal No. 1*

The City's first proposal was comprehensive, including opening 23 total issues and including drafts of proposed revisions to the MOA Articles. Economic terms included a three-year agreement and: (a) equity adjustments averaging 8.7% starting in July

² There is no right to free speech when the government speaks for itself. (*People for the Ethical Treatment of Animals, Inc. v. Gittens* (D.C. Cir. 2005) 414 F.3d 23 ("the First Amendment's Free Speech Clause does not apply to the government as communicator."))

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2022; (b) COLA increases of 1.0% in July 2022, 2.5% in July 2023, and 2.5% in July 2024, *but (c) SLOCEA assuming 3% of the City's CalPERS employer contribution*³.

E. Negotiation Session 2 – April 14, 2022: Information About the Equity Adjustments and Further Discussion of Ground Rules Proposals

At the second negotiations session, the City made a presentation about the compensation study's methodology. This was done in an effort to explain why the City proposed equity adjustments of 8.7%, instead of the 9.8%, which was the average amount SLOCEA classifications were below the median according to the compensation study. The Parties also engaged in further discussions about the ground rules proposals, SLOCEA's continued lack of appetite for Retirement Cost Shifting, and the other open issues comprising the City's Proposal No. 1.

F. Negotiation Session 3 – April 25, 2022: Further Ground Rules Discussions and City's Presentation Regarding Retirement Cost-Shifting

On April 19, 2022, the City submitted a Council Agenda Report ("CAR") to the City Council asking them to approve a resolution calling for compensation increases for the Management and Confidential units averaging 11.74%. These increases were based, in part, on the results of the compensation study. The resolution governing these units' compensation was set to expire on June 30, 2022. But, the City asked that the increases be applied retroactive to April 14, 2022. The City Council approved the resolution and the increases were implemented retroactively. This was not in conformity with the City's Compensation Philosophy.

On April 25, 2022, the Parties met again. The City made a presentation supposedly demonstrating how Retirement Cost-Shifting would actually benefit SLOCEA members. There was further discussion concerning the ground rules, and specifically the City's desire to publicly disclose proposals during negotiations. The Parties tabled the discussion until I could join telephonically later that day. The City agreed to notify SLOCEA in advance about any communications it planned to make to City employees or the public concerning negotiations. SLOCEA reserved the right to pursue a charge if the City's communications violated the MMBA.

Ultimately, the ground rules proposals were set aside without reaching a tentative agreement, withdrawing them, or declaring impasse. SLOCEA decided actually negotiating about substantive terms was a better use of the Parties' time. This

³ For ease of reference, throughout this Position Statement, the City's proposal for SLOCEA members to assume responsibility for 3% of the employer's CalPERS contributions is referred to as "Retirement Cost Shifting."

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negotiations cycle is the first between the Parties without ground rules in at least the past decade.

G. Negotiations Session 4 – May 10, 2022: SLOCEA’s First Proposal

On May 10, 2022, SLOCEA countered with its first proposal. It was also for a three-year term and notably included (a) equity adjustments averaging 11.74% starting in July 2022; (b) \$10,000 in essential worker premium pay; and (c) COLA increases of 5.26% in July 2022, 5.26% in July 2023, and 5.26% in July 2024. Additional terms concerning changes to the other Articles of the MOA were also included. During this meeting, the City’s chief negotiator Che Johnson first indicated to SLOCEA that when the Parties reach impasse, the City will not impose its LBFO.

On May 19, 2022, the City Manager Derek Johnson held a “State of the City” presentation, which reached all City employees via Microsoft Teams. Mr. Johnson stated, “due to recruitment and retention challenges being faced in the labor market and high inflation that wage adjustments need to take place as soon as administratively possible.” At that time, SLOCEA bargaining unit was the only group in negotiations with the City, meaning Mr. Johnson’s message was directed specifically at SLOCEA.

H. Negotiations Session 4 – May 24, 2022: SLOCEA’s Side Letter and the City’s Second Proposal

On May 24, 2022, the Parties discussed the City’s retroactive implementation of equity increases for the Management and Confidential units pursuant to the April 19, 2022 CAR. They also discussed the CPI-U for Los Angeles-Long Beach-Anaheim being the correct metric used by the City to evaluate cost-of-living increase in San Luis Obispo. That is the measure called for in the City’s Compensation Plan documents and the measure previously agreed upon by the Parties in prior negotiations. The City’s chief negotiator continued to reference other metrics despite SLOCEA’s objection.

In response to the City Manager’s calling for wage adjustments “to take place as soon as administratively possible,” SLOCEA proposed a side letter that would implement equity adjustments averaging 9.2% starting the first full pay period following Council’s adoption. SLOCEA’s side letter was modeled after the CAR the City Council passed to implement the 11.74% equity adjustments for the Management and Confidential units. SLOCEA requested that the side-letter be taken to the City Council for consideration without delay regardless as to the status of reaching a successor MOA. SLOCEA made a separate proposal regarding a successor MOA, which included a one-year term with a COLA increase of 5.6% and no Retirement Cost-Shifting.

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The City countered with its second proposal which contained two three-year options in the alternative. Option 1 was the same as the City's first proposal. Option 2 eliminated Retirement Cost Shifting and included: (a) equity adjustments averaging 8.7% provided in phases, 75% in July 2022 and 25% in July 2023 and (b) COLA increases of 1.5% in July 2023, 1.5% in July 2024.

The City's chief negotiator, Che Johnson, again indicated that the City's LBFO would not be imposed following the conclusion of any impasse procedures. He indicated the City Council had provided that direction to their negotiation team in closed session.

I. Negotiations Session 5 – June 1, 2022: City's Third Proposal

By June 1, 2022, the Parties reached tentative agreements on 20 primarily non-economic terms⁴. The City also provided its third proposal, which also contained two, three-year options. Option 1 included (a) equity adjustments averaging 9.2% starting in July 2022; (b) COLA increases of 1.5% in July 2022, 3% in July 2023, and 3% in July 2024, but (c) Retirement Cost-Shifting. Option 2 eliminated Retirement Cost-Shifting and proposed: (a) equity adjustments averaging 8.7% provided in phases, 75% in July 2022 and 25% in July 2023 and (b) COLA increases of 1.5% in July 2023, 2% in July 2024.

The City indicated that this third proposal was its LBFO, even though it contains two offers. The City also indicated for a third time that if an agreement was not reached, the City would not impose either of its LBFOs⁵.

If the City truly needs wage adjustments to compete for workers, there is little practical reason for the City not to impose its Option 2. Barring imposition of Option 2 is meant to hold badly-needed equity adjustments hostage to punish SLOCEA for refusing to agree to Retirement Cost-Shifting. Relegating SLOCEA members to salary purgatory indefinitely for refusing to agree to Retirement Cost-Shifting is more than hard bargaining, it is a bad faith tactic that has completely broken-down negotiations and prevented the Parties from reaching an agreement on a successor MOA.

The meeting concluded with SLOCEA again asking the City to present its side-letter to City Council at the next meeting. The City initially told SLOCEA that it would not take the side-letter to the City Council because it did not need to. The City vaguely said that it would be rejected by the Council because it did not accomplish the City's

⁴ Since tentative agreements were reached, further discussion about them is largely omitted.

⁵ The City could not lawfully impose Option 1 because it includes shifting CalPERS retirement obligations, which is a waiver of a right. (*City of Pinole* (2012) PERB Dec. 2288-M.)

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labor relations objectives, presumably because adopting the side-letter would not result in SLOCEA accepting Retirement Cost-Shifting. SLOCEA members approached the City Manager days later and he agreed to present SLOCEA's side-letter to the City Council. The City Council ultimately rejected SLOCEA's side-letter because it did not meet with the Council's labor relations objectives.

J. Negotiations Session 6 – July 6, 2022: SLOCEA's Third Proposal and the City's Premature Declaration of Impasse

The City asked SLOCEA to take its LBFO to a vote of its general membership. SLOCEA agreed, but indicated that it took time to provide sufficient notice and arrange for the vote. Ms. Domini was on vacation June 3-22, 2022 and no negotiations occurred in her absence. On June 14, 2022, SLOCEA's members met and discussed the City's last proposal. The membership was not enthusiastic about either of the City's LBFO, but no official vote was taken as the notice provisions had not been satisfied. Instead, the negotiations team determined to go back to the City with one more proposal.

On July 6, 2022, in a last effort to reach an agreement, SLOCEA presented its third proposal, which contained two options. Proposal No. 3A is a one-year contract with: (a) equity adjustments averaging 9.2% being implemented in July 2022 and (b) 1.5% COLA increase in July 2022. Proposal 3B is a two-year contract with: (a) equity adjustments averaging 9.2% being implemented in phases, 8.25% in July 2022 and the remainder in July 2023; (b) 1.5% COLA increase in July 2022; and (c) 3.0% COLA increase in July 2023. Approximately 15-minutes after SLOCEA presented its third proposal, the City delivered to SLOCEA a written notification of impasse.

The City declared impasse even though: (a) it knew SLOCEA would have a general membership meeting on July 7, 2022, where the City's LBFO was scheduled to be put to a vote; (b) it knew SLOCEA's Board and membership were not yet acquainted with SLOCEA's third proposal; and (c) it did not know the costing of SLOCEA's third proposal. The City's rush to declare impasse indicates the City's surface bargaining.

K. The City Issues False and Misleading Communications to SLOCEA's Members in an Effort to Direct Deal and Influence SLOCEA's Vote

The evening of July 6, 2022, the City posted documents to SharePoint, which is an information platform accessible by all City employees. These documents were intended to be read by SLOCEA's members and provide an update on negotiations from the City's perspective. They included detailed breakdowns of the economic terms of City's LBFO and SLOCEA's third proposal. The City also sent an email to all City employees at 8:01 a.m. on July 7, 2022, directing employees to the SharePoint page. These communications to SLOCEA's members contained the following false or

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misleading statements/information aimed at undermining SLOCEA and unreasonably influencing the scheduled vote on the City's LBFO:

1. SLOCEA had not responded to the City's LBFO (*objectively false*);
2. SLOCEA delayed negotiating (*objectively false*);
3. SLOCEA failed to timely respond to proposals made by the City in March and April 2022 (*objectively false*);
4. The City's LBFO had an average salary increase of 13.7 percent over a three-year term (*misleading*);
5. The City's LBFO – Option 1 would result in an average net salary increase of 14.36% (*misleading*);
6. The City's LBFO – Option 2 would result in an average net salary increase of 12.81% (*misleading*);
7. Management and Confidential units' equity adjustments went into effect May 5, 2022 (*objectively false*);
8. Retirement Cost-Shifting is in alignment with the rest of the City's represented and unrepresented groups (*misleading*);

These communications confused SLOCEA members and SLOCEA had to spend a considerable portion of its July 7, 2022 membership meeting correcting the City's misinformation before it could proceed with the scheduled vote. Ultimately, over 100 members voted unanimously to reject the City's LBFO and proceed with impasse procedures.

L. The Parties Unsuccessfully Mediate and Appoint a Factfinder

SLOCEA notified the City of the outcome of the vote and agreed that the Parties were at impasse. SLOCEA requested mediation and mediator Raphael Leib was appointed by SMCS on July 15, 2022. The Parties mediated on August 4 and 12, 2022 but were unable to reach an agreement. The Parties are scheduled to attend factfinding with Najeeb Khoury on September 14, 2022. But for the City's unfair labor practices, the Parties would have reached an agreement before now.

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IV. THE CITY HAS ENGAGED IN UNFAIR LABOR PRACTICES

A. Based on the Totality of the Circumstances, the City Has Engaged in Bad Faith Bargaining

The City has a duty to bargain with SLOCEA in good faith under the MMBA concerning anything within the scope of representation. (Cal. Gov. Code § 3505.) An employer who has violated its duty to meet and confer in good faith is subject to an unfair practice charge. (PERB Reg. 32603.)

PERB uses a “per se” or “totality of the conduct” analysis, depending on the specific conduct involved. (*City of Davis* (2018) PERB Dec. 2582-M, p. 9.) Per se violations generally involve conduct that violates statutory rights or procedural bargaining norms. (*Fresno County In-Home Supportive Services Public Authority* (2015) PERB Dec. No. 2418-M.) All other types of bad faith conduct are evaluated based on the totality of the circumstances. (*City of Davis, supra*, PERB Dec. 2582-M, p. 9.) Totality of the circumstances requires PERB to look at the entire course of negotiations, including the parties’ conduct at and away from the table, to determine whether the respondent has bargained in good faith, or with the subjective intent to reconcile differences and reach agreement. (*City of San Jose* (2013) PERB Dec. 2341-M, p. 19.)

Bargaining parties must seriously attempt to resolve differences and reach a common ground. (*Los Angeles Count Civil Service Com. v. Superior Court* (1978) 23 Cal.3d 55, 61-62.) They may not simply go through the motions of negotiations while simultaneously engaging in conduct that prevents agreement. (*Fresno IHSS* (2015) PERB Dec., 2418-M, p. 13.) The ultimate question is whether the party’s conduct, when viewed in its totality, was sufficiently egregious to frustrate negotiations. (*City of Arcadia* (2019) PERB Dec. 2648-M, pp. 34-35.)

Indications of bad faith bargaining may include maintaining an inflexible position without sufficient justification, making predictably unacceptable offers, putting unreasonable time limits on negotiations, taking inconsistent positions, or making misleading statements. (*See e.g.*, PERB Dec. Index Topic 606.000.)

The City’s conduct when viewed as a whole is sufficiently egregious to have frustrated negotiations. There is abundant evidence of bad faith bargaining that supports PERB to issue a Complaint. Specifically:

(1) The City Foreclosed Retroactivity Due to SLOCEA’s Non-Existent Delay: The City attempted to start negotiations early. SLOCEA opted to start negotiations under the timeline negotiated by the Parties in the 2019-22 MOA. Negotiations continued as expeditiously as practicable until the parties reached impasse. However, the City sought to punish SLOCEA for refusing to negotiate on

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the City's earlier timeline by foreclosing retroactivity before negotiations even started due to SLOCEA's alleged "delay." (*See infra* § (II)(C).)

(2) The City Position on the Ground Rules Was Unjustifiably and Maliciously Intractable: In negotiating the ground rules, the City insisted on retaining the ability to publicly disclose negotiations proposals. The Parties have never previously conducted negotiations in the public eye because it tends to undermine the free exchange of ideas. The City's maintenance of this position meant the Parties spent nearly four meetings discussing ground rules, which they ultimately were forced to set aside. (*See infra* (II)(D)-(F).) In hindsight, the City had to avoid waiving the ability to disclose proposals to City employees so that practically it could avoid violating them by issuing the misleading July 6-7, 2022 communications. (*See infra* (II)(K).)

(3) The City Took Inconsistent Positions on the Immediacy of Equity Adjustments: The rhetoric espoused by the City since the start of bargaining has been that it needs wage adjustments as soon as possible to address its retention/recruitment problems. There is no disagreement between the Parties that SLOCEA members should get equity adjustments that are supported by the compensation study. However, when the City was provided SLOCEA's side-letter as a mechanism to implement the adjustments, the City refused to give it serious consideration. This was even though it retroactively implemented equity adjustments of 11.74% for the Management and Confidential units using a resolution that is similar to SLOCEA's side-letter. The City does not truly care about addressing its recruitment/retention issues or implementing wage adjustments without delay. Instead, it needs to be able to hold the equity adjustments hostage in order to extort Retirement Cost-Shifting from SLOCEA.

(4) The City Made Multiple False and Misleading Statements to SLOCEA Members to Influence Their Vote: The City's July 6-7, 2022 communications via email and SharePoint frustrated negotiations in addition to constituting impermissible direct dealing. (*See e.g., infra* (II)(K), (III)(B).)

(5) The City's Claim It Will Not Implement Its LBFO After Impasse Procedures: SLOCEA acknowledges there is no requirement that an employer impose its LBFO after impasse procedures are exhausted. More often than not, unions seek to prevent LBFOs from being imposed. Dire economic conditions have made it so that the worst outcome for SLOCEA members is continuing indefinitely with the status quo. The City knows this, and has attempted to exploit SLOCEA's desperation by multiple times, even early in negotiations, threatened that when impasse procedures are exhausted the City will not impose its LBFO-Option 2. (*See infra* § (II)(G)-(I).)

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(6) The City Prematurely Rushed to Impasse: A party demonstrates bad faith when it rushes to impasse, or if its impasse declaration is premature, unfounded, or insincere. (*Fresno County In-Home Supportive Services Public Authority* (2015) PERB Dec. 2418-M, p. 53.) The City delivered written notice of impasse within approximately 15 minutes after receiving SLOCEA's final proposal, suggesting that they had an impasse declaration prepared prior to even seeing SLOCEA's final offer. The City declared impasse even though it knew that SLOCEA's members still had yet to weigh in on either the City's LBFO or SLOCEA's final proposal. The City prematurely declared impasse before further negotiations were necessarily futile.

B. The City's False and Misleading Communications to Its Employees Also Constitute Impermissible Direct Dealing

Generally, an employer may communicate with employees about the subject of bargaining when certain conditions are met. "Where an employer accurately describes an event, and does not on its face carry the threat of reprisal or force, or promise of benefit, the Board will not find the speech unlawful." (*Chula Vista City School Dist.* (1990) PERB Dec. 834.) However, the employer's communications are not only evaluated based on what they say, they are examined "in light of the impact that such communication had or was likely to have on the reader." (*Rio Hondo Comm. College Dist.* (1980) PERB Dec. 128, p. 20.) "The touchstone for determining the propriety of an employer's direct communication with employees is the effect on the authority of the exclusive representative." (*California State University* (1989) PERB Dec. 777-H, p. 9 (citing *Muroc Unified School Dist.* (1978) PERB Dec. 80).)

The City knew that SLOCEA objected to the City's communicating about negotiations in detail with the public and employees. That was the subject of the first four negotiations sessions concerning the ground rules proposals. SLOCEA was concerned that the City would not communicate the facts truthfully. Its concerns were well-founded.

The City's July 6-7, 2022 communications to SLOCEA members via email and SharePoint contained no fewer than eight false or misleading statements/information. (*See infra* § (II)(K).) Those statements were meant to cause SLOCEA's members to think the City's LBFO was more beneficial than it actually was and/or undermine SLOCEA's credibility and support. These communications were timed so that they would have the maximum effect on the membership vote which was scheduled to take place mere hours after the communications were disseminated.

Many SLOCEA members initially relied on the City's statements. At the July 7, 2022 membership meeting, SLOCEA leadership had to spend considerable time in SLOCEA's pre-vote presentation correcting members who were confused by the City's

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communications. Fortunately, SLOCEA members were largely unpersuaded by the City's false and misleading statements and voted unanimously to reject the City's LBFO. However, PERB should find the City committed direct dealing in order to deter future misleading or false communications.

V. RELIEF

Based on the unfair practice charge and this position statement, SLOCEA requests that PERB provide the following relief:

1. Issue a Complaint concerning all of the MMBA violations alleged herein;
2. Find that the City has committed unfair practice charge(s);
3. Order the City to negotiate in good faith and refrain from unlawful direct dealing;
4. Order the City to post notices to the City employees reflecting the violations found;
5. Award SLOCEA its fees and costs incurred in prosecuting this charge.

Should you require any further information, please contact me.

Sincerely,


Tracy J. Jones

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VERIFICATION

I, Dale Strobridge, declare:

I am the labor consultant that conducts negotiations on behalf of SLOCEA. I attended every negotiation session for a successor agreement to the 2019-22 MOA. I have personal knowledge of the facts contained in the above position statement and if called to do so, I could and would testify to their accuracy to the best of my knowledge.

Signed under penalty of perjury under the laws of California on the below date in August 2022.

Dated: 8/31/2022

DocuSigned by:
Dale E. Strobridge
CAABE547088A43B
Dale Strobridge