



TOWN OF LOS GATOS
FINANCE COMMISSION REPORT

MEETING DATE: 1/08/2024

ITEM NO: 3

DATE: January 3, 2024
TO: Finance Commission
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive an Overview of the Labor Negotiations Process

RECOMMENDATION:

Receive an overview of the labor negotiations process.

BACKGROUND:

The Finance Commission Chair asked several questions pertaining to public sector labor negotiations. The responses to the questions can be found in the Discussion section of this report. The questions, along with other Commissioner comments can be found in Attachment 1. This document provides background on public sector labor negotiations. With this context, the Chair's questions are responded to at the end of this report.

The Finance Commission last considered the topic of labor negotiations in November 2022 and that staff report can be found in Attachment 2. In addition, staff posts two published databases with salary information for all California agencies: <https://www.losgatosca.gov/418/Salaries>. The State Controller's database, or portions, can be downloaded into Excel for analysis.

California's Meyers-Milias-Brown Act (MMBA) is the statute that regulates labor negotiations at Los Gatos and other California public agencies.¹ The Act authorizes local agencies to adopt local rules regarding employer-employee relations to supplement the MMBA. The Town's local rules are set forth in its Employer-Employee Relations Resolution (EERR), Town Resolution 1974-41. Together, the MMBA and the Town's EERR set forth the law that governs labor negotiations at the Town.

The Public Employment Relations Board (PERB) is the state agency that oversees and adjudicates disputes regarding public sector bargaining in California. PERB has jurisdiction to

¹ Gov. Code, § 3500, *et seq.* Note public educational institutions, trial courts and certain other public agencies are governed by other similar state bargaining statutes.

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

BACKGROUND (continued):

hear and rule on unfair labor practice charges from all represented local agency employees except management and confidential employees, and individual peace officers (unless the employee organization represents a mixed bargaining unit).²

Under the MMBA, employees have the right to form and join employee organizations³ that, once recognized by an agency's governing body, represent the employees' interests in the collective bargaining process as to matters within the "scope of representation." The statutory scope of representation is defined in the MMBA as: "all matters relating to employment conditions and employer-employee relations, including, but not limited to, *wages, hours and other terms and conditions of employment*."⁴ Employees that are members of a recognized employee organization are referred to as "represented employees."

Generally speaking, if an employer wishes to make a change within the "scope of representation" that will affect a represented employee, the employer must meet and confer⁵ in good faith with the union that represents the affected employee(s). The MMBA defines the concept of meet and confer as:

... mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on the matters within the scope of representation...⁶

Good faith requires a subjective attitude with a genuine desire to reach an agreement, manifested in conduct which indicates "a serious attempt to resolve differences and reach a common ground."⁷ Failing to meet and confer in good faith when required is unlawful under the MMBA and may subject the party in violation to an unfair labor practice charge filed with PERB.

Currently, the Town recognizes three employee organizations: the American Federation of State, County and Municipal Employees Union (AFSCME), the Los Gatos Police Officers Association (POA), and the Town Employees Association (TEA). The labor agreements⁸

² Gov. Code, §§ 3509, subd. (f), 3511.

³ For purposes of bargaining, the terms "employee organization," union, and association may be used interchangeably.

⁴ Gov. Code § 3504.

⁵ For purposes of negotiations, the terms "meet and confer," negotiate, and bargain may be used interchangeably.

⁶ Gov. Code § 3505.

⁷ *Placentia Fire Fighters v. City of Placentia*, 57 Cal.App.3d 9, 25 (1976).

⁸ For purposes of negotiations, the terms "labor agreement," collective bargaining agreement (CBA), memorandum of agreement (MOA), and memorandum of understanding (MOU), may be used interchangeably. Los Gatos refers to its labor agreements as MOUs.

BACKGROUND (continued):

covering each employee organization are posted on the Town's website at <https://www.losgatosca.gov/1700/Agreements-Memorandums-of-Understanding>. The labor agreement for each organization governs the terms and conditions of employment for the term (i.e., length) of the agreement. When a labor agreement expires, the parties are obligated to meet and confer on a successor labor agreement if one party so requests. Unless the parties agree on new terms, the MMBA requires all operative terms in the MOU to remain status quo.

BARGAINING PROCESS OVERVIEW

A. Preparing for Bargaining

Labor agreements at public agencies typically end at the close of the fiscal year, which for most public agencies is June 30. Well prior to the agreement's expiration date, each party determines the composition of their respective bargaining teams. Typically, the employee organization's bargaining team is comprised of various types of employees represented by the employee organization, as well as an outside professional negotiator who may be employed by an outside firm or a larger union affiliate. The Town's bargaining team is determined by the Town Council through the Town Manager and typically includes the Assistant Town Manager, the Human Resources Director, and an outside professional negotiator who is typically employed by a law firm. Also, well prior to the expiration of the contract, each party sets internal goals for the negotiation and reviews the current MOU to identify areas to change, remove, improve, or otherwise update.

B. Conducting Negotiations

Because each party to a negotiation must bargain in good faith, negotiations typically require many meetings. The obligation to bargain in good faith includes setting bargaining schedules and establishing any other "ground rules" for negotiations.⁹ Although a party need not submit any proposals, both parties must meaningfully respond to the other side's proposals. Part of the obligation to bargain in good faith involves moving toward the other side's position where possible. To do otherwise, may be "regressive bargaining," which may be evidence of bad faith. In this way, the parties will ideally reach a final position that is a compromise between each party's initial position. Depending on the various dynamics of a negotiation, MOU provisions may remain predominantly the same from contract to contract while others, like salary, typically change with each successor MOU.

⁹ Negotiable ground rules may include "the time and place for bargaining to start, the order of issues to be discussed, the final settlement conditions that may be imposed...and a variety of similar other matters." (*Anaheim Union High School District* (19821) PERB Decision No. 177.)

BACKGROUND (continued):

Authority for Town proposals comes from the Town Council.¹⁰ The bargaining team will seek direction from Council prior to making corresponding proposals at the table. To secure Council direction, the MMBA authorizes the Town Council to meet in closed session with its negotiations team. All materials and communications shared during closed session are privileged and cannot be disclosed to anyone outside closed session.¹¹ Once the Town's bargaining team has direction from Council, negotiations may proceed.

C. Privacy and Confidentiality

The default rule under the MMBA is that bargaining should be done in private.¹² Given the default rule, to do otherwise would require meeting and conferring with affected employee organizations or risk a PERB charge for unlawful bad faith bargaining. Moreover, because PERB has held that confidentiality is a common "ground rule" during negotiations,¹³ insisting on non-confidentiality may further risk a bad faith bargaining charge. PERB has also held that an agency's unilateral decision to publicize bargaining proposals and other information may constitute bad faith bargaining because it would unilaterally regulate "the bilateral process of negotiations over substantive terms by potentially impeding the flow of negotiations, restricting the authority of the County's bargaining representatives,...preventing any agreement regarding confidentiality of the bargaining process,...inhibiting the free flow of frank discussions, encouraging 'grandstanding' for the benefit of perceived interest groups, and stifling informal exploration of ideas that could lead to mutual agreement."¹⁴

D. Reaching Agreement and Ratifying the Contract

Once the parties have reached agreement on terms of a successor MOU, they arrive at what is called a "tentative agreement." The agreement is referred to as tentative because it is not binding on the parties until it is ratified by the Union and subsequently approved by the Council in open session.

After tentative agreement, the union will meet with its members to review the new terms and will hold a ratification meeting where union members vote on the tentative MOU, usually by secret ballot. A majority of votes determine if the contract is ratified (accepted) or rejected by the union.

¹⁰ Under California law, authority for labor negotiations rests solely with the governing body. (See *Pacifica Firefighters Association v. City of Pacifica*, 76 Cal.App.5th 758 (2022).)

¹¹ Gov. Code § 54963.

¹² *County of Orange* (2018) PERB Decision No. 2594M – decision analyzing whether County ordinance setting rules for bargaining required meeting and conferring with unions.

¹³ *Id.*, pp. 28-32.

¹⁴ *County of Orange*, *supra*, pp. 28, 30.

BACKGROUND (continued):

After Union ratification, the tentative MOU will go to the Council for approval. The Council vote on the tentative MOU must be properly agendized and approved by Council vote in open session. Once approved by Council, the new MOU is valid and legally binding on the parties for the duration of its term.

E. Impasse Procedures

If the parties truly cannot reach agreement after meeting and conferring in good faith, they are at a point referred to in the law as *impasse*. Once at impasse, the MMBA offers various impasse procedures, such as voluntary mediation and a subsequent option the union can invoke for a fact-finding hearing before a three-person panel.¹⁵ Council must hold a public hearing on the fact-finding panel's report. Once the parties reach impasse, this is also a time when non-essential workers (as that term is defined by the MMBA) may lawfully engage in a work stoppage (i.e., strike).

Although statutory impasse procedures are designed to pressure the parties to move off of their respective positions toward agreement, the parties are not required to agree by law. Indeed, after the exhaustion of impasse procedures, if the parties have not reached agreement, the Council may unilaterally impose terms that were previously proposed, or may decide to take no action and continue the status quo. However, after impasse, the union has the right to request to meet and confer on the contract prior to the end of the fiscal year. The practical effect of this is that the parties will likely commence bargaining shortly after going through the impasse process.

DISCUSSION:

The Finance Commission Chair asked several questions pertaining to public sector labor negotiations. Preliminary responses are provided below.

1. Has the Town routinely performed compensation surveys prior to each round of contract negotiations with our various bargaining units? Provide a list of all such surveys for the past 10 years including:
 - a. the dates of each survey
 - b. who performed each survey
 - c. the cost of the survey if third parties were utilized
 - d. the specific job titles/positions covered in each
 - e. the municipalities or other employers that were used as comparisons in each
 - f. was the survey made public

¹⁵ Gov. Code § 3505.2 and Gov. Code § 3505.4(a).

DISCUSSION (continued):

- g. the specific Staff, Council Members, and/or others who actually received each survey if it was not made public.

Response: Town staff compile a variety of information and analysis that is shared with the Town Council in Closed Session. This information aids the Council in providing direction to its bargaining team. Given that materials provided in Closed Session are confidential, closed session materials cannot be disclosed and were not made public.

In 2018, the Town hired Koff & Associates to complete a compensation survey and classification analyses for select classifications in 2018. The portion of the agreement for the compensation survey was \$22,880.

In 2022, the Town hired Bryce Consulting to complete a compensation survey and classification analyses for select classifications in 2022. The portion of the agreement for the compensation survey was \$15,300. This agreement has now expired. No firms are currently under contract for these services.

- 2. Has the Town, at any time, entered into either written or verbal agreements or arrangements with bargaining units or other third parties preventing or limiting or discouraging the disclosure of information related to labor negotiations or compensation surveys that would otherwise be legally disclosable?
 - a. If so, provide a list of all such agreements or arrangements for the last 10 years.
 - b. Was each agreement or arrangement explicitly approved by a Town Council vote in a scheduled meeting? Do meeting minutes document this in each case? Are such meeting minutes published?
 - c. What is the rationale for such secrecy arrangements? How exactly does the Town benefit from such arrangements? How can Finance Commissioners or any public citizen verify such benefits?
 - d. Does the Town Manager support a proactive public input and outreach process as recommended by the Finance Commission in November 2022?

Response: Negotiating parties typically determine their own ground rules of engagement that touch on these topics, as described above.

- 3. Please provide details about any third party consultants or contractors the Town has used for the past 10 years for labor negotiations and/or compensation surveys.
 - a. List of such consultants and the services they have provided.
 - b. Total amounts paid to such consultants by year.
 - c. Which specific Town Staff members interact with or manage such consultants regarding labor negotiations or salary surveys?

DISCUSSION (continued):

- d. Do such consultants interact with Town Council members? Only in Closed Sessions? In any open meetings? Otherwise?
- e. How long has the Town employed each consultant? Do we have a policy or practice of periodically changing consultants as we do with auditors?

Response: The Town typically hires law firms with expertise in public sector labor negotiations as part of its bargaining team. The Town has used two firms in the last ten years, including Renne Sloan Holtzman Sakai and Liebert, Cassidy & Whitmore. As these firms also provide other labor law services, the estimated annual payment is approximately \$70,000 to \$116,000 per year for all services. The Human Resources Director is the lead staff member overseeing these agreements. As members of the bargaining team, the outside labor attorneys, as appropriate, participate in Closed Session and open sessions with Town Council. The Council meetings are the only interaction with Council members as is typical with almost all Town consultants. The Town does competitive requests for proposals as part of the selection process of the firms consistent with the Town's Procurement Policy.

In 2018, the Town hired Koff & Associates to complete a compensation survey and classification analyses for select classifications. The portion of the agreement for the compensation survey was \$22,880. The Human Resources Director oversaw the work of the consultant.

In 2022, the Town hired Bryce Consulting to complete a compensation survey and classification analyses for select classifications. The portion of the agreement for the compensation survey was \$15,300. The Human Resources Director oversaw the work of the consultant. This agreement has now expired. No firms are currently under contract for these services.

CONCLUSION:

This report provides an overview of the labor negotiations process.

In 2022, the Finance Commission passed several motions to recommend that the Town Council create policies similar to the City of Menlo Park regarding the negotiations process. These proposals are with the Council Policy Committee. The items recommended by the Finance Commission remain on the work plan for consideration and prioritization.

The Finance Commission is advisory to the Town Council with regard to budget matters. If the Finance Commission would like to make a recommendation to the Town Council regarding Town salaries, that discussion can be agendized for a future date.

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DATE: January 3, 2024

Attachments:

1. Commissioner Comments
2. November 2022 Finance Commission Item Regarding Labor Negotiations