



REGULAR MEETING AGENDA

Date: 9/12/2023
Time: 6:00 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 814 7839 7160
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

EARLY STAFF REPORT RELEASE NOTICE

Pursuant to the requirements of City Council Procedure #CC-11-0001, the following staff report is being released 15 days in advance of the City Council meeting:

Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit ([Staff Report #23-197-CC](#)).

This notice is posted in accordance with Cal. Gov. Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the city website at menlopark.gov/agendas and can receive notifications of agenda postings by subscribing at menlopark.gov/subscribe. Agendas and staff reports may also be obtained by contacting the City Clerk's Office at 650-330-6620. (Posted 8/28/2023)



STAFF REPORT

City Council

Meeting Date:

9/12/2023

Staff Report Number:

23-197-CC

Regular Business:

Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit

Recommendation

Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit (SEIU).

Policy Issues

This report is prepared in accordance with City Council Procedure #CC-11-0001, public input and outreach regarding labor negotiations (Attachment A).

Background

The collective bargaining agreement for temporary employees, who are represented by SEIU, had a term of Oct. 26, 2008, through Oct. 22, 2011. The parties have not bargained on a successor agreement since the labor agreement expired in 2011, and the terms of the existing agreement have remained in place. SEIU has submitted a request to commence negotiations. The City currently employs approximately 93 temporary employees. In a typical year, the City hires 20-30 seasonal temporary employees. SEIU represents those employees who work at least two hundred and eight (208) hours per year, specifically excluding City Councilmembers, police reserves and other temporary staff assigned to public safety functions, classifications contained in other bargaining units, and independent contractors. SEIU also represents the non-sworn frontline personnel at the City through a separate collective bargaining agreement, which was recently adopted by the City Council with a term of July 11 through June 30, 2026.

Analysis

This report transmits personnel and process information to members of the City Council, the subject bargaining unit, and the public to inform upcoming labor negotiations with SEIU. If the parties cannot agree on a successor agreement, the terms of the existing agreement remain until modified pursuant to State-mandated impasse procedures or successful negotiation of a successor agreement.

Labor contract negotiations are governed by the Meyers-Milias-Brown Act (MMBA), Government Code §3500. MMBA requires that local agencies meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized collective bargaining units. MMBA further requires that the City fully consider proposals made by collective bargaining unit representatives before arriving at a determination of policy or course of action.

Negotiable items with direct costs

Base pay. Temporary employees receive an hourly wage within a pay range. The pay ranges for temporary employees are set at the rates specified in the memorandum of understanding (MOU) for permanent SEIU employees (Attachment B), with exceptions for hourly maintenance workers, officials and referees. There are no steps associated with the pay ranges for temporary employees, so employees may be placed anywhere within the range. Employees in this unit are eligible for overtime at one and one-half (1.5) times the employee's regular pay rate.

Base pay for each employee may change due to negotiated general salary increases (GSIs), also known as cost-of-living adjustments (COLAs), or merit-based performance adjustments.

Additional pay. Temporary employees are also eligible for the following pay differentials:

1. Bilingual differential – Employees who are assigned to job duties requiring bilingual skills are eligible to receive 81 cents (\$0.81) per hour above their regular pay rate.
2. Night and weekend differential – Employees assigned to work in the library on weekdays after 5 p.m. or before 8 a.m. or on Saturdays and Sundays receive 5% above their regular pay rate for those hours. Employees assigned to work in the police department assigned to swing, midnight, relief or day shift on the weekend receive 5% above their regular pay rate for those hours.

Benefits. Temporary employees receive paid time off at the rate of 0.034 hours per hour worked.

Additionally, the City provides uniforms to all temporary employees who are required to wear one.

Retirement. All temporary employees earn Social Security credits, unless they are enrolled in CalPERS. Temporary employees who work on an hourly basis and work more than one thousand (1,000) hours in a fiscal year become eligible for CalPERS membership. Once an employee is a member of CalPERS, they remain a member permanently. Currently, there are 16 temporary employees enrolled in PERS.

Other fringe benefits. Other fringe benefits include Medicare and workers' compensation insurance.

Table 1 on the following page outlines the estimated expenditure breakdown for SEIU temporary employees in fiscal year 2023-24.

Table 1: Estimated FY 2023 24 SEIU temporary employees unit personnel costs	
Type	Total
Salary	
Base	\$1,320,187
General salary increase (GSI)*	\$13,202
Salary total	\$1,333,389
Other benefits	
Medicare	\$19,334
Workers' compensation	\$33,335
Other benefits total	\$52,669
SEIU temporary unit total	\$1,386,058

*Estimated cost of 1% pay increase

Attachment C provides a web link to a Citywide benefits summary by group, which includes a comparison of retirement, health benefits, leaves, special pays, allowances and other fringe benefits.

Negotiable items with indirect costs

In addition to the direct costs outlined above, indirect costs items are also open to negotiation. Either side may seek changes in other factors subject to MMBA, such as tools and equipment, employee engagement and retention efforts, and professional development opportunities.

Roles during labor contract negotiations

The following provides an overview of major roles in the process to promote understanding of the labor contract negotiation process:

City Council. The City Council designates the City’s chief negotiator, authorizes the City’s initial bargaining position, considers proposals made by collective bargaining unit representatives through the chief negotiator, and ultimately approves a successor agreement. City Council receives data, analysis, and recommendations from the city manager and designated City staff. City Council Procedure #CC-11-0001, establishes early release requirements for all matters about labor negotiations. Other than approving the successor agreement, the City Council may elect to hold all labor negotiations discussions in closed session.

Chief negotiator. The chief negotiator leads labor agreement discussions, prepares all proposals, counter-proposals, and tentative agreements and is authorized to execute tentative agreements consistent with negotiating authority granted by City Council. The chief negotiator also consults the city manager, or designee, on workplace impacts of proposals, counter-proposals and tentative agreements.

City manager. The city manager is responsible for the efficient administration of all City services, and administration of the City Council approved budget. In the negotiations process, the city manager advises City Council and the chief negotiator on management matters subject to MMBA. The city manager also advises on recruitment and retention tools, employee engagement, and emerging trends in regional workforce management. The city manager designates city staff to support the chief negotiator.

Designated city staff. Labor negotiations can be a time-intensive process requiring significant preparation, coordination, analysis and follow-up work. The city manager typically will assign the assistant city manager, administrative services director, human resources manager, and a management analyst to support the process. To the greatest extent possible, information about labor negotiations is limited to individuals authorized by the city manager, such as how a proposal might impact operations.

Collective bargaining unit's chief negotiator. Each bargaining unit identifies a chief negotiator. The City's negotiating team commits to communicating only with the bargaining unit's chief negotiator unless otherwise authorized by the bargaining unit's chief negotiator.

Collective bargaining unit negotiating team. Each bargaining unit identifies a negotiating team of active City employees to advise their collective bargaining unit's chief negotiator through the labor contract negotiations process. The negotiating team typically meets amongst itself and is also present during all negotiation meetings.

Negotiations calendar and process

The City's chief negotiator and City management will provide the City Council with a negotiation strategy and initial bargaining authority recommendation at their Sept. 26 closed session. Time on the City Council's tentative agenda is reserved for closed sessions at each regular meeting after that to ensure City Council agenda capacity for labor negotiation conversations.

City Council will provide the City negotiator with direction to engage SEIU under the MMBA requirement to negotiate successor agreements with recognized employee groups. The first meeting between the two parties typically includes:

- Introductions
- Ground rules for negotiations
- Future meetings and time constraints
- Discussion of material contained in this report
- Discussion of any additional information requests from the bargaining unit
- Preliminary discussion of interest areas on both sides

Since the existing agreement expired in 2011, the following calendar is illustrative in nature, identifying key dates in order to adopt a successor agreement with SEIU before the end of the calendar year:

- Aug. 28 – City staff release report on negotiations with SEIU
- Sept. 12 – Members of the public offer their input on the City's negotiations position for City Council consideration
- Sept. 26 – City Council meets in closed session, confirms negotiating teams, and provides initial bargaining authority to chief negotiator
- Sept. 27 through Oct. 31 – City and SEIU negotiate successor agreement
- Nov. 10 – Estimated deadline for SEIU membership to ratify tentative successor agreement for effective date of Jan. 1, 2024
- Nov. 20 – Staff release report for ratified tentative successor agreement with SEIU
- Dec. 5 – Public meeting for City Council to consider ratification of a successor agreement with SEIU effective Jan. 1

Resources available to City Councilmembers

Attachment D, "Understanding the Labor Negotiations Process produced by the Institute for Local Government," further describes the roles, process and requirements of labor negotiations.

Impact on City Resources

There are no impacts on City resources as a result of receiving input on this issue. The cost of negotiating this contract is estimated at approximately \$10,000, inclusive of the chief negotiator's fees, if an external negotiator is utilized, legal review and internal staff time. Additional consulting services may be required depending on the scope of negotiation. City Council will meet in closed session to provide direction to the City's negotiating team. The negotiators will meet and confer with the SEIU negotiation team to reach a tentative agreement. Once a tentative successor agreement is ready for City Council ratification, the fiscal impact of that tentative agreement will be released 15 days before the City Council vote at a public meeting.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the report 15 days prior to the City Council meeting of Sept. 12.

Attachments

- A. City Council Procedure #CC-11-0001
- B. Hyperlink – City of Menlo Park labor agreements: menlopark.gov/laboragreements
- C. Hyperlink – Benefits summary by bargaining unit: menlopark.gov/benefitsummary
- D. Understanding the Labor Negotiations Process produced by the Institute for Local Government

Report prepared by:

Marvin Davis, Interim Finance Director

Brittany Mello, Administrative Services Director

City of Menlo Park

City Council Policy

Department City Council	Page 1 of 1	Effective Date 03/02/2011
Subject Public Input and Outreach regarding Labor Negotiations	Approved by City Council 03/01/2011	Procedure # CC-11-0001

PURPOSE

To incorporate public input into the labor negotiations process.

BACKGROUND

The City Council has expressed a desire to improve public communication and outreach on labor relations to the extent reasonably possible.

POLICY

A regular business item shall be placed on a Council agenda in advance of formal labor negotiations that includes an opportunity for the public to comment. At least seven days prior to this meeting, staff shall post a report that contains relevant information on employee salaries and benefits, as well as the methodology used to determine a competitive and appropriate compensation package. As part of this process, a concerted effort shall be made to request public comment on the negotiations parameters.

As a general rule, staff shall engage the services of a labor attorney to participate in formal labor negotiations with bargaining units representing permanent employees.

During labor negotiations, public comment will be provided prior to the entry into closed session to discuss labor negotiations, in accordance with State law. At the conclusion of the closed session, the Council shall report out any action taken, including in the record the individual votes taken and the characterization of the deliberations. In addition, at some point in the negotiations process, staff shall submit a public report to Council that provides a general status of labor negotiations and that allows for public input prior to concluding negotiations.

Staff shall prepare and make public a staff report, at least fifteen calendar days prior to Council consideration of a tentative agreement or implementation resolution for any bargaining unit, that provides full details and costing associated with the recommended action, shall schedule the matter as a regular business item and shall provide an opportunity for the public to comment.

Understanding the Labor Negotiations Process

August 17, 2012

Under California law,¹ when county or city employees are represented by a union, the agency must negotiate with that union regarding their pay and benefits, working hours, and working conditions. This paper explains the key elements of that process.

Roles

Elected officials determine the agency's bargaining position and consult with staff throughout the negotiation process. Agency staff report back to decision-makers about the face-to-face negotiations' progress and any impediments to reaching agreement.

Before Bargaining

Prior to meeting with the union, the agency's negotiators will meet with elected officials to discuss how to proceed. Having this meeting well in advance of negotiations gives elected officials time to consider relevant issues and develop a set of questions.

Early conversations also give staff time to compile necessary information for decision-makers. Examples of such information may include:

- Anticipated increases in current employee expenditures
- Money available for salaries and benefits
- Cost of salary and benefit enhancements
- What comparable employers are paying
- Turnover statistics

Just as elected officials need time and information to make well-informed decisions, staff will need time to prepare and provide accurate information. As with any issue, limited staff resources may make it advisable to prioritize information requests.

Conversations about the agency's initial bargaining position typically take place in closed session.² The agency's negotiators will share their understanding of what it will take to

Additional Resources

The Institute has two glossaries to assist local officials as they engage with constituents, bargaining representatives and each other about labor relations and public pension issues:

- Labor Relations Terminology:
<http://www.ca-ilg.org/post/labor-relations-terminology>
- Public Pension Terminology:
<http://www.ca-ilg.org/post/public-pension-terminology>

The Institute is grateful to Dr. Rhonda Albey for preparing this piece. Dr. Albey has worked in labor relations for Los Angeles County since 1990.

reach agreement with the union. The agency's governing body will then give negotiators an initial bargaining position.

During Bargaining

No matter how reasonable the agency's initial bargaining position is, it is unlikely that the union will immediately accept it.

The Process Can Be Rough

During the negotiations process, the union may organize demonstrations and/or phone and e-mail campaigns. Discourse may become bullying and emotional.

Don't take it personally – it's all part of the process. Both sides may need to show they are doing their job. Union negotiators need to show their members that they are fighting for them and elected officials need to show they are working hard for the community.

The negotiation process is unpredictable. The agency's negotiators may have misread the union's priorities and goals. Union representatives may have misread the employees' mood. New issues may arise. There may be internal divisions within the union. These challenges may make it impossible to get agreement within the original parameters authorized.

Working with the Agency's Negotiators. As challenges arise, the agency's negotiators may ask for modifications in the bargaining position. This is normal in the course of any type of negotiation, as each party learns more about the interests of the other. Multiple meetings with the negotiating team may be necessary.

Modifications may not involve increases in total expense. An example is moving money from benefits to salaries (or vice-versa). Another example is if decision-makers have authorized higher increases for some position classifications than others, employee representatives may ask to even increases out.

Meeting with Union Officials. As negotiations continue, the union may seek meetings with individual elected official(s) to discuss the agency's bargaining position. As with any group of constituents, an elected official can choose to meet with them or not. If an elected official does meet with union officials, the official should be clear that the official is not speaking on behalf of the governing body.

A word of caution about meeting with employees *without* their union representative during labor

Expect to be Misquoted

People tend to hear what they want to hear.

Someone may say something like "I'll speak to the negotiating team," and mean exactly that – they'll speak to them.

The employees may hear "He/she will speak to the negotiating team and tell them to give us what we want."

Some strategies for minimizing miscommunication are to take notes during the discussion and not to meet with union representatives alone.

negotiations: such meetings can lead to an unfair labor practice accusation of “direct dealing.”³ Avoid any action that makes it appear that the agency is interfering in the union’s relationship with the employees it represents.

If the elected official meets with union representatives, it is helpful to share the conversation with the agency’s bargaining representatives. The conversation may provide insights that will help the agency’s negotiators move the process forward.

If Agreement Is Reached

The agreement still has to be ratified by the rank and file. The union may feel it needs to sell the agreement as a victory for its members. The union may post flyers or e-mails trumpeting their win over management.

For their part, elected officials may hear concerns from constituents that the agency is spending too much on employee salaries and benefits. Agency officials are well-advised to be moderate in their public discourse relating to the agreement. Anything that might be construed as bragging about the agency’s victory in the bargaining process may jeopardize the agreement. The employees won’t ratify the agreement if they think it is a

Post Agreement Issues

While the agency will not have to negotiate during the term of the agreement, issues may arise between negotiations that may require changes.

bad deal or their representatives weren’t sufficiently aggressive on their behalf.

A helpful practice can be a public statement that does not validate either extreme, but says something to the effect that “We reached a deal to provide adequate public services at reasonable cost.”

If Agreement Cannot Be Reached

What happens if the agency can’t reach an agreement? There are procedures under state law for resolving impasse. A local labor relations resolution may provide further guidance on procedures.

Mediation

A mediator may be brought in to try and resolve differences between the agency and the union. Mediators have no authority to impose a settlement, but can be useful in helping the parties look at the problem from a new perspective and to move past personal differences. The state Division of Mediation and Conciliation can provide a mediator.

Fact-finding. Whether or not mediation occurs, the union may request fact-finding as a next step. With the assistance of the

An Expired Contract is not the Same as No Contract

If the contract has expired and agreement has not been reached on a new one, the agency must maintain the status quo until there is a new agreement.

Public Employee Relations Board (PERB), a fact-finding panel is appointed which reviews both parties' proposals, holds hearings and ultimately recommends a settlement.

Unilateral implementation. After exhausting the impasse procedure and holding a public hearing, the agency may impose its final financial offer upon the employees. Management cannot force the union to accept a whole new contract.

Unilateral implementation cannot be used to impose work rule or operational changes and can only be implemented for one year. After that year, or during the year, if the union indicates it has a significant change in its position, the agency must bargain again with the union to try and reach a mutual agreement.

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on Local Government 101 go to <http://www.ca-ilg.org/localgovt101>.

The Institute thanks the following individuals for their review and input into this resource:

- Holly Brock-Cohn, Human Resources Director, City of Alameda
- Casey Echarte, Assistant Human Resources Director, City of San Mateo
- Eraina Ortega, Legislative Representative, Employee Relations & Human Resources, California State Association of Counties
- Delores Turner, Assistant City Manager, Administrative Services Department, City of Emeryville

The Institute welcomes feedback on this resource:

- *Email:* rstephens@ca-ilg.org *Subject:* *Understanding the Labor Negotiations Process*
- *Fax:* 916.444.7535
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

References and Resources

¹ California Government Code 3500, known as the Meyers-Miliias-Brown Act, (MMB) requires negotiation in good faith with the recognized employee representative on specified subjects. It also permits local agencies to adopt their own rules and regulations for the governance of labor relations.

² See Cal. Gov't Code § 54957.6, which provides:

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

³ See Cal. Lab. Code § 1156; *Ruline Nursery Co. v. Agricultural Labor Relations Bd.*, 169 Cal. App. 3d 247, 266, 216 Cal. Rptr. 162, 172 (1985)