



2008-2009 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

CITY OF SAN JOSE HOSED BY IAFF LOCAL 230 EXECUTIVES

Issue

Should the City of San Jose renegotiate its contract with the IAFF Local 230 with the focus on eliminating the ability of Local 230 executives to:

- file excessive or frivolous grievances?
- abuse Union Time Off (UTO)?
- avoid actively participating in quarterly labor management meetings and Labor Management Initiative programs?

Summary

San Jose firefighters are dedicated, courageous and face great risk every time they respond to an emergency call. This report in no way is intended to reflect on their performance or commitment to public service.

At this time, the City of San Jose is in the process of negotiating a new Memorandum of Agreement with the International Association of Fire Fighters (IAFF) Local 230. The City of San Jose needs to apply a firmer hand in its contract negotiations with Local 230 representatives. The current contract allows Local 230 executives (President, Executive Vice President and Vice President) to carry out their responsibilities to the City of San Jose in a detrimental manner by:

- Failing to work cooperatively with City representatives
- Attempting to exert control over the decision-making processes within the department
- Filing excessive or frivolous grievances
- Taking excessive UTO and refusing to account for time taken
- Refusing to agree to ground rules for negotiations
- Failing to participate in required and proposed meetings to improve labor relations

The City of San Jose has an opportunity through the present contract negotiations to remedy these problems by negotiating for more clearly defined terms and conditions under the new agreement. In addition, the City Management needs to take a firmer stance with regard to the conduct of Local 230 Executives who are also on the City's payroll.

Background

Local 230

“The mission of the San Jose Fire Fighters Local 230 is to provide for the wages, benefits, and safety of San Jose Fire Fighters through the political and collective bargaining process. The San Jose Fire Fighters Local 230 union exists to address the concerns of its members and to strive to improve the conditions under which its members work.” (sjff.org)

Local 230 has 100% membership, which consists of all 747 San Jose firefighters from the rank of Battalion Chief on down. The members are the third highest paid firefighters in the state, behind Oakland and Los Angeles. (“Top 10 Highest Paying Cities for Firefighters”, FireLink.com). The Fire Chief, the Assistant Fire Chief, and the four Deputy Chiefs are not union members. The Fire Chief reports to the San Jose City Manager.

Local 230 has an Executive Board (Local 230 Executives) of twelve officers, including four shift representatives, and three trustees. Executive Board members are full-time firefighters and conduct their union board duties during working hours, using a combination of city-paid time and union-paid time. The President has been in office for nine years, and although he retired from the fire department in December 2008, he remains as President of the Board. In addition to their full-time firefighter salary paid by the City, board members are compensated by the union for serving on the board. Compensation for serving on the Board is noted in the chart below:

Table 1: Local 230 Executive Board Pay – 2008

	% of Top Fire fighter wages based on (\$98,238) *	Local 230 Exec Salary (Est.)	Total Compensation from City	Local 230 Exec Pay + Total City Comp	Job Title
President	40%	\$39,295	\$119,547	\$158,842	Fire Captain, retired
Executive Vice-President	35%	\$34,383	\$131,211	\$165,594	Fire Captain
Vice President	35%	\$34,383	\$153,997	\$188,380	Fire Captain
Secretary	35%	\$34,383	\$254,965	\$289,348	Battalion Chief
Treasurer	35%	\$34,383	\$192,878	\$227,261	Battalion Chief

*Top Firefighter Wage in use in 2008 was \$98,238

Based on a formula in the Memorandum of Agreement between the City of San Jose and the IAFF Local 230 (MOA), retirement compensation has the potential of reaching 90% of the final pay rate at retirement. In addition, there is also no limit as to how much sick leave a firefighter can accrue and then receive in a lump sum cash payment upon retirement.

Base firefighter pay is for a 56 hour work week comprised of approximately three 24-hour shifts, plus overtime.

The City has 11 bargaining units representing 6,659 employees. Local 230 constitutes about 11% of the total with its 747 members. Each bargaining unit negotiates a separate contract with the City. All bargaining units work with the same City Employee Relations Director to manage grievances and negotiate contracts.

Governing Documents

Local 230 and the City of San Jose currently operate under a MOA executed on December 2, 2008. The stated purpose of the MOA is to “promote and provide harmonious relations, cooperation, and understanding between the City and the employees ...”

The MOA has not changed in substance since the mid-90s. The Local 230 MOA, like all other city union agreements, works in conjunction with the City Charter and presumes good faith.

The City Charter Section 1111 (§1111) passed by voters in November 1980, created compulsory arbitration for Fire and Police Department disputes and prohibits strikes.

“All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the City and either the fire or police department employee organizations shall be submitted to a three-member Board of Arbitrators upon the declaration of an impasse by the City or by the recognized employee organization involved in the dispute.”

Discussion

A. Excessive Grievances

The purpose of the grievance procedure is to provide a prompt and effective means of resolving employee grievances at the lowest possible level of the organization. (San Jose Fire Department “Routine Operations Policies and Procedures”, Section 4.210.9). Ideally, the grievance procedure provides a means of communication through which a Fire Department employee may express a complaint.

Article 20, Section 20.1 of the MOA defines a grievance as: “Any dispute between the City and an employee, or, between the City and the Union, regarding the interpretation or application of this Memorandum of Agreement shall be considered a grievance. A grievance may be filed by an employee on their own behalf, or by the President of the Union, or designated representative(s).” A grievance brought by a firefighter may be pursued by a union official whether or not the firefighter chooses to go forward with the issue.

The employee or the union representing the employee may appeal a decision at any time before the issue is brought to arbitration. At the arbitration step, the resulting decision is binding on both the City and the union. Under special circumstances, the grievance may be taken directly to arbitration. A copy of all grievances and their subsequent resolution must be sent to the President of the Local 230. The four-step grievance procedure as stated in the MOA is attached in Appendix (A) and set forth in pertinent part in the table below:

Table 2: Grievance Process

Grievance Step	Union 230 Personnel Involved	Fire Department Personnel Involved
1	Firefighter Local 230 Rep	Supervisor
2	Firefighter, Local 230 Rep.	Fire Chief or Asst. Chief Supervisor
3	Firefighter Local 230 Rep	Employee Relations Officer Fire Chief or Asst. Chief Supervisor
4 (Arbitration)	Firefighter Local 230 Rep	Arbitrator Employee Relations Officer Fire Chief or Asst. Chief Supervisor

In addition to the Grievance Process under the MOA, §1111 provides the right for Local 230 to demand a “meet and confer” on any matter related to “wages, hours, or terms and conditions of employment.” There are no time limits on how long the process will take before an impasse is declared and it goes to arbitration. Grievances filed under the MOA and “meet and confers” initiated under Section 1111 are separate procedures. Taken together, however, they provide Local 230 executives opportunities to abuse the process and prevent changes.

As of May 2, 2009, there were 21 open and unresolved Fire Department grievances of Step 3 or above, including “meet and confers,” arbitrations and lawsuits. As of the same date there were only nine open and unresolved grievances for all other unions combined. (See Appendix B for online list of labor issues referenced herein.)

Several interviewees spoke of a deliberate attempt by Local 230 executives to “grieve everything possible.” Grievances are used as “place holders,” to establish precedent as leverage for future complaints. “They didn’t really want it resolved.” The union appears to be using the grievance process to micro manage and control the day to day operations of the fire department. The following examples illustrate this point.

Example 1: Recently, the City management, in response to a complaint of sexual harassment, instituted a corrective policy, consistent with the City’s Discrimination and Harassment policy that applies to all City employees. The policy required the removal of sexually-oriented material from the workplace. Local 230 claims that the policy results in a “change of working conditions” and is therefore a violation of the MOA. Local 230 has filed two grievances and is threatening a lawsuit. Local 230 demands: (1) to negotiate the revision to the Fire Department’s policy manual, and (2) a Step 3 grievance to negotiate the revision to the MOA. (A sexual discrimination/harassment policy is required for most businesses under California Labor law.)

Example 2: Local 230 filed a grievance, complaining of a contract violation when the Fire Chief wanted to redeploy equipment and staff during reconstruction of Fire Station 2. This could have been a simple planning meeting and instead turned into another reason for a Local 230 grievance. The issue was initiated in May 2008 and, as of May 2009, it is still pending.

Example 3: Local 230 filed a grievance regarding continued potential deployment of a reserve apparatus, an obsolete but working truck, demanding a replacement. Even though the City had commissioned two tractor-drawn aerial trucks and advised the union that one was slated to replace the older truck, the Union filed a grievance because the arrival of the new trucks was delayed.

B. Union Time Off (UTO)

While the public does not appear to be aware of the problem concerning city-paid union activity, issues regarding Union Time Off seem to be a growing problem nationwide, especially given the state of the current economy. While policies differ between cities, UTO in San Jose, comparatively, is very open-ended. All bargaining units work with the same City Employee Relations Director to manage grievances and negotiate contracts.

Article 33, Section 33.2.6.2 of the MOA enables three Local 230 executives to take time off from their firefighting duties for union business at any one time. The only restriction is that the leave will not exceed twelve hours. UTO is an exception to Article 33 of the MOA that describes required Minimum Staffing. (Appendix C).

Minimum staffing rules were established by arbitration in 1987. The basic purpose of minimum staffing, as described by the National Fire Protection Association, is to ensure the safety of firefighters and the public by requiring that a minimum number of qualified personnel arrive at the scene of the emergency within specified times. When firefighters are on vacation, training, etc., the Fire Department maintains minimum staffing by using either overtime or relief staffing (i.e. firefighters from a pool of employees hired specifically to fill in for permanently assigned firefighters who are absent).

Under Article 33 of the MOA, minimum staffing is set according to specific equipment type and the Engine Companies that operate them. Engine Companies are relatively small, with four to six members. A missing member, particularly a Battalion Chief or Captain, could be critical.

Table 3: Minimum Staffing as Defined in the MOA

Unit	No. of Line Personnel
Each single piece Engine Company and Hazardous Incident Team	4
Each Engine Company with a hose wagon	5
Each 3 piece Engine company	6
Each Truck Company or Urban Search and Rescue Company	5
For each Battalion – Chief/person acting in that capacity	1

Section 33.2.6 of the MOA allows minimum staffing levels to be violated under certain situations, e. g., UTO or training, with no backfill or relief staffing. A firefighter can be absent from the job and his or her company operates without a replacement. In this case the assigned station runs one person short. Oftentimes the firefighter on UTO is a higher ranking officer and is, therefore, not present to direct the firefighting team during an emergency call. A less experienced firefighter would have to step up. Most UTO hours are taken by Local 230 Executives who are likely to be either Fire Captains or Battalion Chiefs.

Section 33.2.6.1 of the MOA allows ten additional firefighters to be absent at any one time for training (with a maximum of two people per battalion) as a further exception to minimum staffing. An obvious question arises: Does the current minimum staffing requirement reflect the true minimum needed for safety if as many as 13 can be gone from their positions for 12 hours at a time? The Fire Department and Local 230 response is that they know when and how to take a “calculated” risk and claim the absences have not caused a problem or safety risk to the remaining firefighters in the company or the public.

There is another conclusion. The current minimum staffing levels were set in 1987. In the last twenty-two years, much has changed in traffic patterns, equipment design, building standards, and population distribution. The current minimum staffing requirement may no longer be accurate.

Is UTO Abused?

It appears that UTO has been abused by Local 230 executives, both in the purpose of activities and the amount of time taken. The purpose is difficult to prove because Local 230 executives refuse to account for how the city-paid UTO is used. Their reason is that reporting is not specifically required by the MOA. From the City's standpoint, the information is needed for staffing and safety purposes and to account for how public funds are being spent. Further, the lack of accountability for UTO creates an opportunity for Local 230 Executives to use UTO for activities that would not be supported by the public.

A 2008 arbitration regarding UTO revealed the following activities Local 230 executives have included under "union business":

- Attend California Professional Firefighters conventions
- Attend IAFF national conventions
- Participate in charitable and fund-raising events including a charitable golf tournament co-chaired by a city council member or the mayor,
- Conduct firefighter training in South America.
- Advocate, in conjunction with the Chief's office and the City Manager's office, the passage of Proposition A in 2005 or 2006.
- Participate in the San Jose Firefighters Political Action Committee which makes recommendations to the Local's executive officers concerning local candidates and initiatives.

While some of these activities may be admirable, they are not appropriate as City-paid activities. For example, union-sponsored political activities should not be compensated by City- paid time. During UTO, San Jose executive board members attended an IAFF convention where a candidate for election was endorsed. Similarly, the Political Action Committee, headed by the Local 230 Executive VP, is involved with the promotion of political campaigns for candidates and ballot measures.

How Other San Jose Unions Handle UTO

The MOAs of other San Jose City unions that sanction UTO do not allow any of the activities listed above. Instead, they specifically list what activities are allowed under UTO. (Appendix D)

Three of the City's eleven bargaining units have no UTO terms specified. A fourth, the Police Officer's Association, has no UTO terms in their MOA. Instead, a limit of 1.5 Full-Time Equivalent was set in arbitration, with no conditions whatsoever. This includes a full-time union representative who has no active police duty and a half-time person who receives 20 hours of UTO pay and 20 hours police pay.

Seven out of eleven bargaining units, representing 3,879 out of 6,659 total unionized employees, including the largest union, AFSCME Local 101(AFL-CIO), have UTO terms that are very similar to each other. The seven bargaining units specify that UTO can be taken by one or two union representatives as follows:

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings.
- To attend grievance meetings when used to facilitate settling of grievances.
- To attend Benefit Review Forum meetings (up to two designated representatives).
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations Director (up to two designated representatives).
- To attend meetings scheduled by Administration when attendance is requested.
- To attend other meetings and trainings approved by the Employee Director, or designee.

UTO Hours Taken

The top three Local 230 Executives have taken over 10,000 hours of UTO over five years. This is equivalent to an average of 39.6 hours per week. They are accountable only for the number of hours taken. How these hours were spent is not reported.

**Table 4:
Top Executive Union Time Off Taken Jan.1, 2004 thru Dec. 31, 2008**

Local 230 Board Position	Hours of UTO 2004-2008	Job Title
President	4,720	Fire Captain
Executive Vice President	4,105	Fire Captain
Vice President	1,471	Fire Captain
All others (60)	2,643	Various
TOTAL UTO 2004-2008	12,939	

Between calendar years 2004 through 2008, the President and Executive Vice President, both Fire Captains, took a vast majority of the total UTO hours taken. Based on the log of UTO hours they took much of the UTO simultaneously and took 12 hours at a time. Typically, they spent the day away from the station and only returned in the evening when most routine activities are significantly decreased. An analysis shows that the City has been paying for half-time firefighters who sleep through a good part of the time they are on active duty. Attempts by the Fire Department to have Executives account for their time have been thwarted in arbitration by the long-standing terms of the MOA regarding UTO.

The following charts depict the use of active duty hours:

- (1) City-paid UTO,
- (2) Local 230-paid time off, called a “shift trade,” where the union paid for another person to substitute, and
- (3) Actual on the job hours available for fire-fighting:

**Chart 1: Local 230 President (Fire Captain)
TOTAL ACTIVE Job Time 2006-2008**

Does not include disability, vacation, and other non-firefighting tasks.

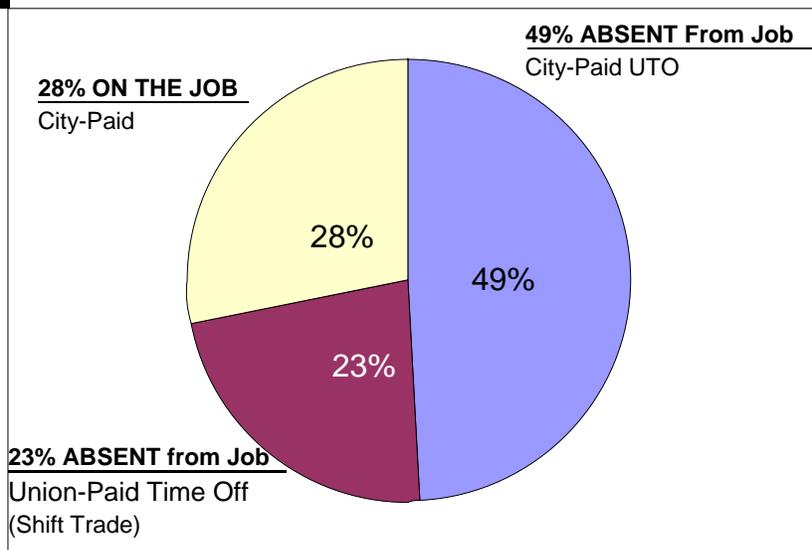
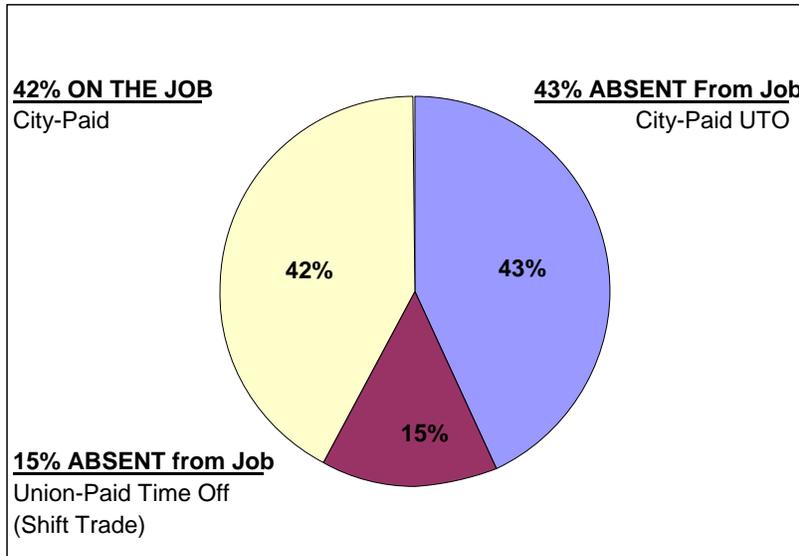


Chart 2: Local 230 Executive Vice President (Fire Captain) TOTAL ACTIVE Job Time 2006-2008

Does not include disability, vacation, and other non-firefighting tasks.



In addition to the above UTO and shift trade absences, the Executive Vice President served on the City Pension Board and took additional time off to travel doing “due diligence” for the Pension Board. He took 14 trips between 2006-2008 totaling 55 days out of town which was paid for by the City as administrative pay or on-duty miscellaneous absence and is not included in the above chart.

C. Union/City Relationship

The current Fire Chief has made multiple attempts to get Local 230 participation in quarterly meetings and to participate in a labor relations program. The MOA-required quarterly meetings are not occurring, grievances are excessive, and interviews with Local 230 executives reveal ill-will toward City management. It appears that Local 230 Executives are attempting to usurp the Fire Chief’s efforts to improve the operations of the Fire Department and to damage his relationship with the Local 230 rank and file.

It is worth noting that an amicable and constructive relationship can exist between the City and Unions. For example, the Police Department has a similar MOA to Local 230s, but views its relationship with the San Jose Police Officers’ Association (POA) as a collaborative effort to improve the Police Department. The following quotes are taken from an interview with the Police Department:

- “The relationship with the POA has been great.”
- “They don’t play the union card on us.”
- The union and the chief “play nicely in the sandbox.”

- Grievances can be worked out at the first meeting with the chief:
 - “Its always a handshake. One day or a phone call.”
 - When asked “what is the process?” the answer was, “meet and settle the issue.”
- The Police department sees it as an advantage to have a dedicated union representative because they are always accessible and not on active duty:
 - “The union reps have so much union business they don’t have time to fool around.”
 - “He [union rep] is always accessible.”

Quarterly Meetings – Department Labor Management Committee

Article 37, Section 37.1 of the MOA sets up a department labor management committee that meets no less than quarterly. The committee consists of representatives of the Fire Department and Local 230, with the Employee Relations Director acting as facilitator. The purpose of the committee is to discuss matters of mutual concern pertaining to the improvement of the Fire Department and the welfare of its employees. All persons representing both parties sit as equals. The meetings are informational only. They are not to process grievances, negotiate contracts or “meet and confer.”

The Chief initiated and succeeded in holding a meeting on November 6, 2007, which was the first Labor Management Committee meeting conducted in several years. None have been held since then.

Labor Management Initiative (LMI)

Beyond the required quarterly meeting, the Chief, in an effort to build trust and promote open communication between Local 230 and the City, has attempted to coordinate a labor relations process that would utilize the Labor Management Initiative (LMI). The LMI is a joint program of the International Association of Fire Chiefs (IAFC) and the International Association of Fire Fighters (IAFF) designed to foster cooperative and collaborative labor-management relationships. The program consists of two, 2-day workshops held six months apart. Both workshops are facilitated by a fire chief/union president team.

LMI benefits include:

- Improved labor-management relations
- Increased trust between the fire chief and union president
- Improved interpersonal communications between labor and management
- Increased involvement and cooperation from all members of the organization
- Increased focus on goals benefiting both the organization and its members
- Reduction in adverse actions that affect labor-management relationships
- Improved service to the community

The first time that LMI was brought up for discussion was during the November 6, 2007 quarterly meeting. Despite the efforts of the Fire Chief to set up an LMI program, to date the current Local 230 Executives have refused to participate in this or any labor-management relations seminar.

Contract Negotiations

The MOA negotiation process has historically been long and protracted. The MOA covering July 5, 2000—June 30, 2003 was eventually signed on June 18, 2001. In anticipation of a drawn out negotiation, a tentative agreement was signed to cover January 1, 2003 through February 29, 2004. Negotiation for the current MOA, covering 2004-2009, started in January of 2003. It was not completed until December 2, 2008.

Ground rules could expedite and add civility to the negotiation process. But Local 230 refuses to establish ground rules for contract negotiations, thereby making the negotiations more difficult. (See Appendix E for an example of ground rules used in the Police Officers Association negotiation.)

Conclusion

The toxic relationship between Local 230 and the City has prevented the fire chief from making improvements that would benefit the entire community. Local 230 has refused to participate with the City in labor management committee meetings and LMI programs. Rather than being proactive and working with the City to resolve issues and improve the Union/City relationship, the Union insists on pursuing grievances, arbitrations and litigation which are the most protracted and expensive processes. Grievances, UTO, and bargaining must be handled without disrupting the flow of business and burdening taxpayers further. Many of the numerous grievances filed by Local 230 lack sufficient substance to justify the protracted process required to resolve them.

Local 230 executives are not accountable to the public or fellow fire fighters in how UTO is used. The union makes the decision as to when, why, how and how much UTO they take. Union leadership, especially the president and the executive vice president have taken on average almost 1,000 hours of UTO per year.

The City of San Jose should take a firm stance in negotiating the new MOA. The potential for taking advantage of UTO and the grievance process should be reduced, and labor management meetings that promote a better working relationship between the City of San Jose and Local 230 should be mandatory.

Further, Local 230 members should consider whether their executives, based on their current conduct, truly represent their interests and values, and whether they understand and support the manner and style in which they are represented.

Findings and Recommendations

Finding 1a

Union executives are charged with a dual role as both firefighters and union leaders. Given the number of hours they spend on UTO, the President and Executive Vice President of Local 230 only nominally serve their firefighter role.

Finding 1b

In addition to the City-paid UTO, Local 230 Executive Board members receive additional pay from Local 230. A Local 230 Board member can receive up to \$39,295 for service on the Local 230 Board.

Recommendation 1

Rather than the current UTO arrangement, the City should negotiate a revision to the MOA that designates no more than two individuals who will conduct union business on a permanent basis for a specific agreed upon term. These individuals should not have responsibilities as working firefighters during the term they are assigned to union business.

Finding 2

Under the MOA, UTO may be used for any purpose the Local 230 sees fit. The result is that the City is supporting Local 230 political activities and bargaining tactics by paying:

- Local 230 executives to be trained in tactics to win at the bargaining table.
- Local 230 representatives to attend events where they foster political support for Local 230 positions.
- At least in part, for the Local 230's Executive Vice President to run the Local 230's political action committee.

Recommendation 2

The City should negotiate a revision to the MOA to shift the cost burden of the union activities noted in Finding 2 from taxpayers to Local 230.

Finding 3a

The appropriate use of UTO is not adequately defined in the Memorandum of Agreement. The last attempt by the City to correct the situation was thwarted in arbitration in 2008.

Finding 3b

The top three Local 230 executives have taken more than 10,000 hours of UTO over five years (an average of 39.6 hours per week) during their on-duty work time with no accounting for their whereabouts.

Recommendation 3

The City should negotiate a revision to the MOA specifying that UTO may only be used for the following purposes:

- To attend Civil Service Commission meetings when matters affecting the Union are considered.
- To attend City Council meetings when matters affecting the Union are considered.
- To attend Federated Retirement Board meetings.
- To attend grievance meetings when used to facilitate settling of grievances.
- To attend Benefit Review Forum meetings (up to two designated representatives).
- To attend City Labor Alliance meetings held with the City Manager or Employee Relations Director (up to two designated representatives).
- To attend meetings scheduled by Administration when attendance is requested.
- To attend other meetings and trainings approved by the Employee Relations Director, or designee.

Finding 4a

There is no oversight of UTO, which leaves it open to abuse. A Local 230 representative does not have to explain the reason for the absence beyond claiming it was UTO. Even the supervisor would not know their location on UTO during work hours or the specific purpose of their leave under the current UTO policy.

Finding 4b

During UTO the City is liable for any injuries or property damage caused by the Local 230 representative or any injuries suffered by the Local 230 representative, yet the City has no control over what the Local 230 representative is doing or their location.

Recommendation 4

Until Recommendation 1 is accomplished, at a minimum the City should negotiate with the Union to revise UTO terms in the MOA to the following:

- A description of what constitutes union business payable by the City
- A requirement that UTO be approved by the immediate supervisor in advance, with information as to what the union activity is, the length of the absence, and the fire fighter's location
- Reporting and data tracking of UTO activity, including information regarding notification, purpose, and time taken
- A limit on the total number of days per year allowed for UTO
- A limit on the total number of UTO absentees allowed per Battalion
- An emergency callback requirement

Finding 5a

As long as no more than three Local 230 representatives are out on UTO at any one time, under the current MOA, a Local 230 representative may take UTO during work hours up to 12 hours during a shift.

Finding 5b

When a firefighter is on UTO or training, the assigned station runs one person short. Often the firefighter on UTO is a higher ranking officer and is therefore not present to direct the fire fighting team during an emergency call. A less experienced firefighter would be required to step up.

Finding 5c

If a firefighter is absent due to UTO or training, his position is not back filled. Article 33, Section 33.2.6 of the MOA allows for minimum staffing per company to drop by one fire fighter for these purposes. If the minimum staffing level per company is truly minimal, the public safety could be jeopardized. Alternatively, if this level of risk is low, it would appear that the minimum staffing level per company could be reduced or backfill could be required.

Recommendation 5

The San Jose City Manager should investigate and document whether Section 33.2.6 of the MOA presents a safety or staffing problem. If issues are found, minimum staffing requirements should be re-evaluated. Any changes to minimum staffing requirements should be addressed in a future MOA.

Finding 6

San Jose firefighters may accumulate sick leave and cash out at their highest salary rate upon retirement. Recently, a retired Deputy Fire Chief received a check in the sum of \$251,870.11 for his accumulated sick leave.

Recommendation 6

The City should negotiate with the Local 230 to revise the MOA to add a reasonable cap on sick leave accrual. Firefighters should not be encouraged to come to work ill by the incentive of a large payout upon retirement.

Finding 7a

The desire of Local 230 Executives to be in control of operational decisions causes delay while disputes are being resolved through the grievance process.

Finding 7b

The number of open grievances, lawsuits and arbitrations filed by Local 230 far exceeds the number filed by all other unions in the City combined.

Recommendation 7

The City should revisit the MOA to determine if more specific language in applicable sections would assist in reducing unnecessary labor relations issues.

Finding 8a

Local 230 has refused to participate in an international labor relations workshop sponsored by Labor Management Initiative (LMI).

Finding 8b

Local 230 executives have refused to participate in the quarterly labor relations meetings and have refused to allow the labor relations officer to facilitate and resolve concerns to mutual satisfaction as required by the MOA.

Finding 8c

There appears to be a pervasive lack of trust between Local 230 executives and City management.

Recommendation 8

Local 230 representatives and City management should participate in the LMI and quarterly Labor Management Committee meetings designed to foster cooperative and collaborative labor-management relationships.

Finding 9a

Local 230 has refused to discuss ground rules for negotiation as requested by the City of San Jose.

Finding 9b

Negotiation for the current MOA, covering 2004-2009, started in January 2003 and was not completed until December 2008. This resulted in the City and Local 230 operating without a signed agreement for approximately five years.

Recommendation 9

In order to facilitate the negotiation process, Local 230 and the City Manager should agree upon appropriate ground rules. (See Appendix E for sample ground rules)

APPENDIX A

ARTICLE 20 GRIEVANCE PROCEDURE

20.1 Any dispute between the City and an employee, or, between the City and the Union, regarding the interpretation or application of this Memorandum of Agreement shall be considered a grievance. A grievance may be filed by an employee on their own behalf, or by the President of the Union, or designated representative(s).

20.2 Step I.

20.2.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor within fourteen (14) calendar days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within seven (7) calendar days after receiving the oral grievance, the immediate supervisor shall give the employee a reply.

20.2.2 If the employee is not satisfied with the reply of the employee's immediate supervisor, the employee may appeal the grievance to Step II.

20.3 Step II.

20.3.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Chief or Assistant Chief within seven (7) calendar days following the receipt of the immediate supervisor's oral reply. The Assistant Chief may refer the grievance to the appropriate supervisor.

20.3.2 The written grievance shall contain a complete statement of the grievance, and alleged facts upon which the grievance is based, the reasons for the appeal, the remedy requested, and the sections of the agreement claimed to have been violated, if any. The grievance shall be signed and dated by the employee.

20.3.3 The Assistant Chief, or appropriate supervisor to whom the grievance has been referred, may arrange a meeting with the employee and appropriate Union representative and attempt to resolve the grievance. In any event the Assistant Chief, or designated representative, shall give a written decision to the employee within fourteen (14) calendar days following receipt of the written appeal to Step II.

20.3.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

APPENDIX A - continued

20.4 Step III.

- 20.4.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer within seven (7) calendar days following receipt of the written decision at Step II.
- 20.4.2 Within fourteen (14) calendar days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Union representative, and the Assistant Chief or the appropriate supervisor to discuss the matter. A written decision shall be given the employee or the appropriate Union representative within seven (7) calendar days following the meeting.
- 20.4.3 If the grievant is not satisfied with the decision of the Municipal Employee Relations Officer, the appropriate representative of the Union may appeal the grievance to Step IV -- Arbitration.

20.5 Step IV - Arbitration.

- 20.5.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer, in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at Step III.
- 20.5.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator for determination.
- 20.5.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Mediation and Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 20.5.4 Within seven (7) calendar days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 20.5.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written opinion and reasons for the opinion as soon after the hearing as possible. The opinion shall be final and binding on both parties, and shall be limited to the issue, or issues involved.

APPENDIX A - continued

- 20.5.6 The opinion shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Union.
- 20.5.7 Except as hereinafter provided, each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee schedule, whenever possible, shall be determined in advance of the hearing.
- 20.5.8 Witnesses who are employees and on duty at the time of scheduled appearance shall be released from duty without loss of compensation for the time required to testify. No overtime payments shall be made because of scheduled appearances.
- 20.5.9 Individual grievants shall be released from duty without loss of pay for the time of the arbitration hearing. One (1) spokesperson shall be permitted to be present without loss of compensation for grievances filed by the Union.
- 20.5.10 Arrangements for release time for grievant's witnesses shall, wherever possible, be made with the Municipal Employee Relations Officer no later than twenty-four (24) hours in advance of the scheduled hearing.
- 20.5.11 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 20.5.12 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties. The parties shall meet at least seven (7) calendar days prior to the arbitration hearing date for the purpose of narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.
- 20.6 Immediate Arbitration.
- 20.6.1 Any party may waive the grievance procedure time limits specified in this Article and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the Agreement in so short a period of time as to disallow the party from proceeding within the time limits of this Article. However, the method of proceeding to Immediate Arbitration must be done consistent with the following provisions.
- 20.6.2 The arbitration shall take place no earlier than the fifteenth (15th) day following the request by the grieving party for such "Immediate Arbitration," unless otherwise mutually agreed. During the two (2) week period, fourteen (14) calendar days, immediately following the request for Immediate Arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.

APPENDIX A - continued

- 20.6.3 If the City is the responding party, the Fire Chief and Director of Employee Relations, or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Union representatives, in an attempt to resolve the dispute.
- 20.6.4 Once the request for Immediate Arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two (2) week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two (2) week period.
- 20.6.5 The parties will attempt to have a standing list of available "Immediate Arbitrators," but if no agreement on same is reached, the parties will obtain five (5) arbitrators, by telephone if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two (2) week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.
- 20.6.6 In any such case, the arbitrator selected to decide the dispute or grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in the Article, or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and just manner. However, the arbitrator may not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 20.6.7 Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.
- 20.6.8 The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all possible.



[City Home](#)
 [City Services](#)
 [About San José](#)
 [Visitors](#)
 [Feedback](#)

Office of the City Manager

Saturday, May 2, 2009

[Employee Relations Home](#)

[Welcome](#)

[Biography](#)

[Key Contacts](#)

[Staff](#)

[Calendar](#)

[Offices](#)

- [Budget](#)
- [Capital Improvement](#)
- [Economic Development](#)
- [Emergency Services](#)
- [Employee Relations](#)

[Access San José](#)

[News Releases](#)

[Publications](#)

[Downtown Photo Gallery](#)

[CivicCenter TV](#)

[Newsroom](#)

[CSJ Site Index](#)

[Accessibility Instructions](#)

[Problems viewing site](#)

Types of Labor Issues

Contract Negotiations - These are the negotiations that occur prior to the expiration of a union contract. The negotiations include any proposed changes to the terms of the existing contract as well as any new items proposed by either the City or the Union. For example, contract negotiations include wage increases, benefit changes or other proposed changes to terms of the contract. *Note: If an agreement cannot be reached through negotiations with the police and fire unions, the terms of a new contract are decided through binding arbitration.*

Demand to Meet & Confer (negotiate) - Is when a union demands to negotiate over an action proposed to be taken by the City. *Note: When the City is required to negotiate with the police or fire unions over a particular issue, if an agreement cannot be reached, the matter is decided through binding arbitration.*

Contract Grievance - Includes disputes between the City and a union based upon the grievance procedure in the union contract. Most union contracts define a grievance as a dispute regarding the interpretation or application of the terms of the contract or the interpretation or application of the Employer-Employee Resolution (#39367). *Note: Grievances listed are Step III & Step IV grievances*

Grievance Steps	Presented To
Step I	Immediate Supervisor
Step II	Department Director
Step III	Office of Employee Relations (on behalf of the City Manager)
Step IV	Arbitration (if applicable)

Complaints filed with Public Employment Relations Board (PERB) - The Public Employment Relations Board (PERB) is a state agency charged with the responsibility of administering the collective bargaining statutes covering employees of California local public agencies. This Board, comprised of five members is empowered to prevent and remedy unfair labor practices and interpret and protect the rights and responsibilities of employers, employees and employee organizations. In certain situations, Unfair Practice Charges (UPCs) can be filed with PERB.

Lawsuits - Some labor relations issues may involve litigation.

For more labor relations information in addition to the information below, please [click here](#).

Current Labor Issues

Union	Type	Summary of Issue
OE3	Contract Negotiations	OE#3's contract expired April 17, 2009. The parties have reached impasse and will engage in the mediation process on May 11, 2009.
IAFF	Contract Negotiations	IAFF's contract expires June 30, 2009, and negotiations with IAFF are currently in progress.
AEA	Contract Negotiations	AEA's contract expires June 27, 2009, and negotiations with AEA will begin soon.
AMSP	Contract Negotiations	AMSP's contract expires June 30, 2009, and negotiations with AMSP will begin soon.

Union	Subject/Topic	Type	Summary of Issue
-------	---------------	------	------------------

IAFF (Fire)	Sexual Harassment and Discrimination Policy	Meet and Confer	The City recently revised the Fire Department's policies to ensure consistency with the City's Discrimination and Harassment policy that applies to all City employees, officers, contractors, vendors, suppliers and other persons who participate in City programs and services. This included removal of reference to sexually-oriented material at work. The union is demanding to negotiate over the revision to the Fire Department's policy manual.
IAFF (Fire)	Sexual Harassment and Discrimination Policy	Step III Grievance	The City recently revised the Fire Department's policies to ensure consistency with the City's Discrimination and Harassment policy that applies to all City employees, officers, contractors, vendors, suppliers and other persons who participate in City programs and services. This included removal of reference to sexually-oriented material at work. The union claims that the change in the Fire Department's Policy manual violated the union contract and is demanding to proceed to arbitration.
IAFF (Fire)	Special Operations - USAR Policy	Meet and Confer	In the 2007 arbitration award, the City was awarded its proposal to implement an Urban Search and Rescue Policy (USAR) that also provided a 5% premium pay to eligible employees. Following meetings with the union, the Fire Department implemented the policy effective July 1, 2008, including the premium pay. The union is demanding to negotiate over the impact of the workload as outlined in the policy.
IAFF (Fire)	Special Operations - USAR Policy	Step III Grievance	In the 2007 arbitration award, the City was awarded its proposal to implement an Urban Search and Rescue Policy (USAR) that also provided a 5% premium pay to eligible employees. Following meetings with the union, the Fire Department implemented the policy effective July 1, 2008, including the premium pay. The union filed a grievance alleging the City's implementation of the policy resulted in a change in the terms and conditions of employment and that the City violated the union contract.
IAFF (Fire)	Special Operations - USAR Policy	Lawsuit	In the 2007 arbitration award, the City was awarded its proposal to implement an Urban Search and Rescue Policy (USAR) that also provided a 5% premium pay to eligible employees. The Union filed a petition to partially vacate a section of the arbitration award related to Special Operations – USAR policy.
IAFF (Fire)	Special Operations - USAR Policy	PERB Complaint	In the 2007 arbitration award, the City was awarded its proposal to implement an Urban Search and Rescue Policy (USAR) that also provided a 5% premium pay to eligible employees. The union filed an Unfair Practice Charge against the City claiming that a section of the City's proposal that was awarded in arbitration would be subject to further arbitration. Note: The Public Employment Relations Board dismissed the Union's charge.
IAFF (Fire)	Assistant Master Mechanic Position	Step III Grievance	The Union filed a grievance alleging that a non-Fire union represented City employee had been performing the work of an Assistant Master Mechanic who is represented by the Fire union.
IAFF (Fire)	Engine 6/Station 6 – Hose Wagon (Air Unit/Truck Company)	Step III Grievance	The 2008-2009 Adopted Budget approved by the City Council resulted in the elimination of a Hose Wagon at Station 6. The union filed a grievance alleging a violation of the minimum staffing provision of the union contract.
IAFF	Engine 6/Station 6 – Hose Wagon (Air	Meet and	The 2008-2009 Adopted Budget approved by the City Council resulted in the elimination of a Hose Wagon

(Fire)	Unit/Truck Company)	Confer	at Station 6. The union is demanding to negotiate over the impact of the change in working conditions at Station 6.
IAFF (Fire)	Reserve Fire Investigator Program	Meet and Confer	The Fire Department developed a voluntary reserve fire investigator program and a reserve fire investigator callout procedures policy. The program is intended to identify and train qualified individuals who may be utilized to investigate origin and cause of fires. The union is demanding to negotiate over the impacts of the policies.
IAFF (Fire)	Station 2 move to Station 34 – Water Tender	Meet and Confer	Station 2 was scheduled to be rebuilt and the department reassigned Station 2 staff and equipment. The union is demanding to negotiate over the deployment of the equipment.
IAFF (Fire)	Support Paramedic Assignments	Meet and Confer	The Fire Department has historically used seniority in rank in the selection process for support paramedic assignments. The union is demanding to negotiate over the type of seniority used in the selection process for Support Paramedics.
IAFF (Fire)	Assistant Fire Marshall	Step III Grievance	The union filed a grievance regarding the Fire Department's intention to create a civilian Assistant Fire Marshall/Division Manager position in the Bureau of Fire Prevention. The union alleges the position would materially reduce existing bargaining unit work. Note: This grievance proceeded to Step IV –The arbitrator determined that the work of the Assistant Fire Marshall/Division Manager materially reduces existing bargaining unit work and directed the City and the Union to negotiate.
IAFF (Fire)	Overtime — 40 Hour Employees	Lawsuit	A lawsuit filed against the City claims that the City has underpaid the amount of overtime compensation owed to firefighters assigned to 40 hour workweeks for the last two or three years.
IAFF (Fire)	Overtime — 56 Hour Employees	Lawsuit	A lawsuit filed against the City claims that the City has underpaid the amount of overtime compensation owed to firefighters assigned to 56 hour workweeks for the last two or three years.
IAFF (Fire)	Composition of Retirement Board and Retirement Funding Methodology	Lawsuit	The union filed a lawsuit against the City regarding its demand to submit to binding arbitration a matter related to the composition and funding methodology of the Police & Fire Department Retirement Board.
IAFF (Fire)	Substance/Drug Test	Step IV Arbitration	It is the City's policy that employees shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use. Employees may be requested to submit to a drug and/or alcohol analysis when a manager or supervisor has reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. On February 4, 2009, the City tested an employee under the policy. The union is alleging that the City drug tested a firefighter in violation of the Substance Abuse Policy.
IAFF (Fire)	Substance/Drug Test	Immediate Arbitration (Pending)	It is the City's policy that employees shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use. Employees may be requested to submit to a drug and/or alcohol analysis when a manager or supervisor has reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. On March 26, 2009, the City tested an employee under the policy. The Union is demanding immediate arbitration.
IAFF (Fire)	Final Probation Date	Step III Grievance	IAFF is alleging that the City incorrectly calculated the end of the probationary period for an employee in the classification of Firefighter.

IAFF (Fire)	Firefighters' Bill of Rights (FBOR)	Lawsuit - Petition to Compel Arbitration	IAFF is alleging that the City failed to meet and confer related to the Firefighters' Bill Of Rights.
IAFF (Fire)	Removal of Hose Wagon 6	Lawsuit - Petition to Compel Arbitration	The City Council approved to eliminate the Hose Wagon at Station 6 in the FY08-09 Adopted Budget. IAFF is alleging that the City failed to meet and confer over the impacts of the removal of a hose wagon from Station 6.
ABMEI	Secondary Picketing	PERB Complaint	The union engaged in secondary picketing of private construction sites during its strike in December 2007. The City filed an Unfair Practice Charge with the Public Employment Relations Board (PERB.) PERB issued a complaint against the union. In June 2008, both parties participated in a formal hearing before PERB.
AEA	Layoffs	Meet & Confer	The union requested to meet and confer over the impacts of layoffs, including workload and contracting in.
CEO	Administrative Assistant	Step III Grievance	The union filed a Step III grievance alleging that the City has assigned Administrative Assistant work to job classifications outside of the bargaining unit.
CEO	Total Health & Disease Management Pilot Program	Meet & Confer	The union requested to meet and confer over the pilot program for total health and disease management (THDM) services.
MEF	Authorized Union Activity	Step III Grievance	The union filed a grievance claiming that a union steward was negatively treated because of their participation in authorized union activities.
MEF	Separation from City Service	Step III Grievance	Employee was rejected from probation. MEF alleging that the City failed to notify employee that the employee would serve a probationary period.
MEF	Hazardous Materials Inspectors	Meet & Confer	The union is demanding to meet and confer over the Fire department contracting out bargaining unit work performed by Hazardous Materials Inspectors.
OE3	Voluntary Resignation	Step III Grievance	The union filed a grievance regarding the separation of an employee who is considered to have voluntarily resigned from City service following two consecutive days in which he/she was absent without notification to his/her department. Note: A written decision from the arbitrator is forthcoming.
OE3	Injunctions During Strikes	Lawsuit	During the 2006 negotiations, the union provided the City notice that it may go on strike. The City went to Court to obtain an injunction that would ensure that employees in positions that perform safety-sensitive functions would continue providing services during a strike. An issue arose as to whether the Superior Court had jurisdiction or whether the City was required to request an injunction through the Public Employment Relations Board (PERB). Although a settlement was reached and a strike did not occur, the issue of jurisdiction is still pending. The case is under review by the California Supreme Court.

Last Modified Date: 4/29/2009

[City Home](#) - [City Services](#) - [About San José](#) - [Visitors](#) - [Feedback](#) - [Search](#)

As a customer-driven organization, the City of San José welcomes any suggestions you might have to help us serve you better.

ARTICLE 33 MINIMUM STAFFING

- 33.1 The parties agree that such staffing shall be accomplished pursuant to the Minimum Staffing procedures set forth in the OAG. It is further agreed that such procedures will be revised by the parties in order to equalize minimum staffing opportunities consistent with this Agreement.
- 33.2 The City agrees to provide the following staffing levels at all times:
- 33.2.1 Each single piece Engine Company and the HIT team shall have a minimum of four (4) line personnel.
 - 33.2.2 Each Engine Company with a hose wagon shall have a minimum of five (5) line personnel.
 - 33.2.3 Each three (3) piece Engine company shall have a minimum of six (6) line personnel.
 - 33.2.4 Each Truck Company or Urban Search and Rescue vehicle shall have a minimum of five (5) line personnel.
 - 33.2.5 Each Battalion shall have a minimum of one (1) battalion chief or person acting in this capacity per shift.
 - 33.2.6 At the discretion of the Fire Chief or designee, and notwithstanding the above provisions, the following vacancies need not be filled:
 - 33.2.6.1 A total of ten (10) employees, absent for twelve (12) hours or less, for reasons related to duties or training within their scope of work, however, no more than two (2) employees may be absent from the same battalion at one time.
 - 33.2.6.2 In addition to section 33.2.6.1, a total of three (3) employees, absent for twelve (12) hours or less, who are Executive Board members or designees, for union business.
 - 33.2.6.3 In addition to sections 33.2.6.1 and 33.2.6.2 no more than one (1) employee may be absent from the same battalion at one time for the following employee initiated absences if less than four and one-half (4.5) hours in duration: medical/dental appointments, family illness, and prescribed therapy; compensatory time off, or vacation. Vacation and compensatory time off shall be provided, if approved, on a first-come first-served basis, in the event of a tie, seniority shall be the determining factor.

33.2.6.4 Paramedics may only be absent from their assigned company for the vacancies identified in Subsections 33.2.6.1, 33.2.6.2 and 33.2.6.3 if an accredited paramedic (a support paramedic, minimum staffer or shift trader) is available and the Advanced Life Support of the company is maintained.

33.2.7 The department will attempt to pre-staff five (5) designated holidays (Thanksgiving, Christmas Eve, Christmas Day, New Years Eve, and New Years Day), two (2) weeks in advance by offering the option to work either half shifts or the entire shift by using a Holiday pre-staffing procedure. Any additional vacancies shall be filled by regular minimum staffing and voluntary mandatory procedures.

33.3 If an employee is contacted for pre-staffing and refuses the assignment, a minimum staffing position will not be reserved for that employee.

33.4 Any provisions of Article 14 of this Agreement to the contrary notwithstanding, it is understood that compensation for hours of work performed as a part of implementing the staffing levels referenced above will be paid, in addition to wages earned at the appropriate rate.

APPENDIX D

	MEF	OE#3	IAFF	CEO	AEA Units 41 and 42	IBEW	AEA Unit 43	POA	CAMP	AMSP	ABMEI
Size of Union	2456	839	747	226	218	84	56	1393	454	102	84
	1steward / 50 members	17 Job Reps.		1steward / 50 members	2	4 stewards,1 chief steward		1.5 FTE Arbitra ted			
	Number of authorized attendees							(No Provisions in MOA)			
Union business, 12 hours or less			3								
Attend Civil Service Commission meetings when matters affecting the Union are considered	1	1		2	1	1 steward	1				
Attend City Council Meetings when matters affecting the Union are Considered	1	1		2	1	1 steward	1				
Attend Federated Retirement Board meetings	1	1		2	1	1 steward	1				
Attend grievance meetings when used to facilitate seettling of grievances	1				1	1 steward	1				
Attend Benefit Review Forum meetings	2	2			2		1				
Attend City Labor Alliance meetings held with the City Mgr or Employee Relations	2	2			2		1				
Attend meetings scheduled by Administration when attendance is requested	1	1			1	1 steward	1				
Attend other meetings and training approved by the Employee Relations Mgr or designee	1				1		1				

APPENDIX D - continued

	MEF	OE#3	IAFF	CEO	AEA Units 41 and 42	IBEW	AEA Unit 43	POA	CAMP	AMSP	ABMEI	
Size of Union	2456	839	747	226	218	84	56	1393	454	102	84	
	1steward / 50 members	17 Job Reps.		1steward / 50 members	2	4 stewards,1 chief steward		1.5 FTE Arbitra ted				
	Number of authorized attendees								(No Provisions in MOA)			
Donate blood at City sponsored blood drives. 2 hours to donate platelets.				all								
Stewards Grievance handling w permission of supervisor	stewards			stewards		1 steward/ grievance						
Steward training - 8 hrs./yr	all stewards	17		all stewards		5						
Basic training for new stewards	8 hrs.											
Monthly Steward meeting - 2 hrs.	10	4										
Union Stewards meeting 3 hrs, 6x per yr.						5						
Only to extent employee is required or authorized to attend during normal/scheduled working hrs. No compensation for events outside normal work schedule hrs.	x	x				x						
Not for lobbying or political purposes.	x	x				x						

APPENDIX E

CITY OF SAN JOSE & SAN JOSE POLICE OFFICERS ASSOCIATION 2008 NEGOTIATIONS GROUND RULES

1. PURPOSE

The purpose of these negotiations is to reach agreement on a successor Memorandum of Agreement (MOA) between the San Jose Police Officers Associations (SJPOA) and the City of San Jose by the expiration of the current MOA on June 30, 2008.

2. ISSUES AND PROPOSALS

The deadline for submitting new issues and/or proposals is May 15, 2008. After that date, new issues may be raised by mutual consent of the parties. Issues not submitted before that date or not raised by mutual consent after that date may not be presented at arbitration.

Either party may offer counterproposals that alter an earlier proposal or move in a different direction to invent a new solution to an initial issue, but may not add a new issue or proposal not directly connected to the initial issue.

3. PROCESS

Whenever possible, issues for discussion at each meeting shall be identified at the conclusion of the prior meeting. Additional information or action items needed by either party shall be identified at that time.

4. PROPOSALS

During negotiating sessions, all City and SJPOA negotiating team members may express opinions, share ideas, suggest options, and provide additional information. However, statements of individual team members shall not constitute a proposal, counterproposal, or rejection of a proposal, unless specifically articulated as such by the Chief Negotiator.

5. MEDIA CONTACTS

Until impasse is declared, the negotiating teams agree to provide each other with 24 hour advance notice of their intent to initiate contact with the media about negotiations. If 24 hour advance notice is provided, either party may initiate media contact after 24 hours. This does not preclude either the City or the SJPOA from responding to questions from the media. 24 hour advance notice is not required if either party chooses to publicly clarify or correct information about negotiations.

6. TENTATIVE AGREEMENTS & DROPPED ISSUES

Tentative agreements (TAs) will be identified as such. They are binding only upon final agreement of all contract terms or after an arbitrator's award.

APPENDIX E- continued

**CITY OF SAN JOSE & SAN JOSE POLICE OFFICERS ASSOCIATION
2008 NEGOTIATIONS GROUND RULES**

Dropped issues or TA's will not be revived in arbitration unless identified by the proposing party, in negotiations, as issues that could come back in arbitration.

Tentative agreements are subject to approval by the City Council and ratification by the SJPOA membership unless adopted as part of an arbitration award.

7. RELEASE TIME FOR BARGAINING TEAM MEMBERS

A maximum of four SJPOA representatives will be compensated for negotiation sessions that occur during their regular work schedule. The City shall not pay overtime for time spent in negotiations.

8. IMPASSE, MEDIATION AND INTEREST ARBITRATION

The parties shall meet personally to ascertain/declare the existence of impasse. In the event impasse is declared regarding contract negotiations for a new MOA, the parties will participate in mediation prior to arbitration in an attempt to resolve the dispute. However, the parties shall arrange for an arbitrator and schedule arbitration dates in advance (arbitration shall be conducted in accordance with City Charter section 1111). If the mediation process has not been completed within a 90-day period, beginning with the first day of impasse as determined by written notification of impasse by either party, either party may proceed to arbitration. If the parties do not proceed to arbitration, the arbitrator shall be cancelled.

If the parties remain at impasse following mediation, SJPOA may choose to make a presentation during a public City Council meeting without the requirement of a Council response.

Unconditional tentative agreements will not be submitted to arbitration for resolution but may be submitted for the record to present a complete package to the arbitrator.

Interest Arbitration shall proceed in accordance with City Charter Section 1111. Prior to arbitration proceedings, the parties will hold a preliminary meeting to identify all issues that will be submitted in arbitration and will make best efforts to agree upon an efficient, economical and fair arbitration process, including advance identification of the issues in dispute. Negotiations may continue, on mutual consent, during the arbitration process.

In interest arbitration proceedings, neither party will cite nor otherwise use any proposal or counterproposal or statement made by the other party during negotiations.

For the City of San Jose

For SJPOA

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 28th day of May, 2009.

Don Kawashima
Foreperson

June Nishimoto
Foreperson pro tem

Mary Nassau
Secretary