




Office of the City Manager

CONSENT CALENDAR
February 12, 2008

To:  Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: David W. Hodgkins, Director, Human Resources

Subject: Side Letter of Agreement with IBEW, Local 1245

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with the International Brotherhood of Electrical Workers (IBEW) Local 1245 to modify Section 35 (Grievances) of the Memorandum Agreement.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Section 35 (Grievances) of the current Memorandum Agreement with IBEW Local 1245 stipulates that any grievance not resolved through the established grievance procedure may be referred to an impartial arbitrator by the complainant, as well as the Union, or the City. The intent of the Side Letter of Agreement is to streamline the grievance procedure, by not only providing for individual dispute resolution, but also granting the Union a level of control.

BACKGROUND

On November 12, 2002, the Council adopted Resolution No. 61,810–N.S. that authorized the City Manager to execute and implement a new six-year Memorandum Agreement with IBEW Local 1245. In late 2007, the IBEW Local 1245 Business Representative approached the City recommending changes to Section 35 of the Memorandum Agreement, allowing for a streamlined procedure. Currently, the Union does not have sole discretion on deciding whether a grievance is appealed to arbitration. To streamline the process, the City agreed to modify the language in the Memorandum Agreement allowing grievances filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, to be settled at any step of the grievance procedure at the Union's sole discretion. In addition, when a member of the bargaining unit files a grievance, where the Union is not representing or acting on the grievant's behalf, the member is authorized to utilize the grievance procedure through step 3. The Union retains the sole discretion to refer grievances to Arbitration (step 4). The City has similar provisions in its Memorandum Agreements with all the other Unions representing City employees.

Representatives of the City and the Union have met and conferred and reached a tentative agreement on a Side Letter of Agreement (See Exhibit A) that modifies Section 35 of the contract.

RATIONALE FOR RECOMMENDATION

The Side Letter of Agreement streamlines the grievance appeal procedure.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

David W. Hodgkins, Director of Human Resources, Human Resources, 981-6805

Attachments:

1: Resolution

Exhibit A: Side Letter of Agreement

RESOLUTION NO. ##,###-N.S.

EXECUTE AND IMPLEMENT A SIDE LETTER OF AGREEMENT WITH THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245 TO MODIFY SECTION 35 (GRIEVANCES) OF THE MEMORANDUM AGREEMENT

WHEREAS, the City Council on November 12, 2002, adopted Resolution 61,810–N.S. which authorized the City Manager to execute a Memorandum Agreement with the International Brotherhood of Electrical Workers Union, Local 1245 for the period July 7, 2002 through June 28, 2008; and

WHEREAS, representatives of the City and the International Brotherhood of Electrical Workers (IBEW), Local 1245 met and conferred in good faith and reached agreement on a Side Letter of Agreement to modify Section 35 (Grievances) of the Memorandum Agreement to streamline the grievance procedure.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorizes the City Manager to execute and implement a Side Letter of Agreement with IBEW Local 1245 to modify Section 35 (Grievances) of the Memorandum Agreement. The executed original of the Side Letter of Agreement is attached hereto as Exhibit A and made a part hereof, to be on file in the Office of the City Clerk.

Exhibits

A: Side Letter of Agreement between the City and IBEW, Local 1245

Side Letter of Agreement
Between the City of Berkeley and IBEW, Local 1245

The City of Berkeley and the International Brotherhood of Electrical Workers, Local 1245, have met and conferred and reached agreement on this Side Letter of Agreement to the Memorandum Agreement regarding modification to Article 6 – Grievance and Disciplinary Appeal Procedure, Section 35, to streamline the grievance procedure.

This Side Letter of Agreement is intended to memorialize the agreement reached between the parties and is not intended to supersede any other of the terms and conditions of employment contained in the Memorandum Agreement between the City and IBEW Local 1245.

The terms and conditions of this Side Letter of Agreement will become effective February 12, 2008.

The parties agree that Article 6 – Grievance and Disciplinary Appeal Procedure shall read as follows:

ARTICLE 6 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

SECTION 35: GRIEVANCES

35.1 **Definition:** A grievance is any dispute which involves the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect memorandum agreements which result from the meeting and conferring process.

A grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf, or the Union itself may file a grievance on behalf of a member or group of members. Grievances must be filed in a timely manner. Grievances that are filed by the Union on behalf of a member or group of members, or when a grievant designates the Union to act on his or her behalf, are subject to settlement at any step of the grievance procedure at the Union's sole discretion.

A member of the bargaining unit that files a grievance where the Union is not representing or acting on the grievant's behalf, may only utilize this grievance procedure through step 3. The Union retains the sole discretion to refer which, if any, grievances to move to arbitration.

The parties agree that disclosure to the other party of all relevant information available to them is critical to the successful resolution of grievances at the lowest possible step of the grievance procedure. The parties therefore agree to disclose to each other the relevant information in their possession related to the grievance. Further, the parties agree to comply with reasonable grievance related information requests from the other party in a timely manner.

35.2 Procedure: Grievances shall be processed in the following manner:

35.2.1 Informal Step: An employee who believes that he or she has a grievance (and / or the employee's steward or Union representative) may discuss the complaint with the Deputy Director of Public Works, or with such subordinate management official as the Deputy Director may designate. If the issue is not resolved informally, the formal procedures hereinafter specified may be invoked.

35.2.2 First Formal Step: Any informal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, must be filed in writing to the Deputy Director of Public Works within thirty (30) days from the date the informal discussion was initiated. The written grievance must state specific issues involved, the decision rendered at the informal step, and the remedy sought. The Deputy Director or his or her designee shall have five (5) days to respond in writing to the formal, written grievance.

35.2.3 Second Formal Step: Any formal grievance which has not been resolved by the Deputy Director of Public Works or his or her designee, may be referred to the Director of Public Works or his or her designee within thirty (30) days from the date of the Deputy Director's formal written response, or if more than five (5) days have elapsed since the grievance was presented at the Deputy Director's level.

35.2.3.1 Referral to Department Director: The grievance may be referred to the Director's level and shall include a copy of the original grievance, the decision rendered at the Deputy Director's level, and a clear, concise statement of the reasons for the referral.

The Director of Public Works may designate a personnel representative to investigate the merits of the complaint, to meet with the complaining employee (and/or the employee's steward or Union representative); if the grievant is not the Union itself, to meet with the officials of the Union; and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee

relations officer. The Director of Public Works shall issue a formal written decision within five (5) days of receipt of the grievance or if a meeting is held with the employee and his or her Union, the meeting must be held within ten (10) days of receiving the referral. The Director of Public Works or his or her designee shall issue a written decision within five (5) days from his or her meeting with the complaining employee and/or Union representative. If the issue is not resolved the grievance may be referred to the Third Formal Step within thirty (30) days of receipt of the response from the Director of Public Works.

- 35.2.4 **Third Formal Step:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the grievant, the Union, or the Director of Public Works. Any such referral shall be in writing including a copy of the original grievance, the decision rendered at the Director's level, and a clear, concise statement of the reasons for the referral. The City Manager shall designate a Human Resources representative to investigate the merits of the complaint, and upon request from the employee or the union, that representative to meet with the complaining employee (and/or the employee's steward or Union representative), if the grievant is not the Union itself, to meet also with the officials of the Union, and to settle such grievance or to make recommendations thereon to the City Manager in his or her capacity as an employee relations officer.

The City Manager shall issue a decision within 10-days of receipt of the grievance referral or within ten (10) days of the meeting, or if a meeting is held with the employee and/or the Union, the meeting must be held within ten (10) days of the referral. Grievances filed by a bargaining member where the Union is not representing or acting on the grievant's behalf, shall end at this step and no further right of appeal exists. The City Manager's decision shall be final.

Union controlled grievances: If the issue is not resolved, the grievance may be referred to Arbitration by the Union pursuant to Section 35.2.5 below within thirty (30) days of receipt of the City Manager's response.

- 35.2.5 **Arbitration:** **The Union retains the sole discretion to move a grievance to arbitration.** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred by the Union, or the City to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City. The fees and expenses of the arbitrator and of the court reporter shall be shared equally by the Union, and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

Arbitrator decisions on matters before them which do not pertain to the suspension or discharge of an employee shall be in the form of a recommendation to the City Manager who may accept or reject said decision. In the event of said rejection then, as to that particular grievance, and the fees and expenses of the arbitrator and of the court reporter shall not be shared by the Union, and full payment thereof shall be the sole responsibility of the City.

35.2.5.1 **Arbitrator Jurisdiction:** No arbitrator shall entertain, hear, decide, or make recommendations on any dispute involving a position over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in Section 35.

35.2.5.2 **No Modifications:** Proposals to add to or change this Memorandum Agreement or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum Agreement, nor any matter arising out of or in connection with such proposal, may be referred for arbitration under this Section; and no arbitrator shall have the power to amend or modify or recommend amendment or modification of this Memorandum Agreement or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

35.2.5.3 **Timeliness of Award:** No arbitrator will be selected hereunder who does not agree to render an award not later than thirty (30) calendar days after the close of the hearing. By mutual agreement between the City and the Union, the arbitrator may render an award immediately upon the conclusion of the presentation of evidence.

35.3 **Affirmative Action/EEO Complaints:** Any grievance which in any way affects the implementation of the City's Affirmative Action Program shall not be subject to arbitration. The decision as to whether or not implementation of the Affirmative Action Program is in any way involved shall be made by the City Manager in his or her sole discretion. If, in his or her judgment, any grievance involves the Affirmative Action Program, the Equal Employment Opportunity and Diversity Officer shall notify the Union to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and, in such notification, refer to that section of the Affirmative Action Program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal

Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

35.4 **Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases, no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only grievants which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Memorandum Agreement which has resulted from the meeting and conferring process shall be considered as grievances. Any other matters of compensation are to be resolved in the meeting and conferring process and, if not detailed in the memorandum agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring process is next open for such discussion.

35.4.1 **Response Time Limits:** The Director of Human Resources or his or her designee shall issue a decision in writing within twenty (20) days from the time he or she received the compensation grievance in writing. The grievant or the Union may refer the decision to the Third Formal Step (Section 35.2.4 of this Memorandum Agreement) within twenty (20) days of receipt of the answer.

35.5 **Changes or Interpretations:** No changes in this Memorandum Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

35.6 **Extension of Timelines:** Timelines noted in this section may be extended for cause upon mutual agreement between the City and the Union.

35.7 **Days:** All references in this Section 35 to "days" shall mean normal working days except as otherwise noted.

35.8 Grievances Challenging Disciplinary Action

35.8.1 Any grievance involving any disciplinary action up to as three (3) day suspension will be filed at the Director level.

35.8.2 All grievances involving demotion, discharge, or suspension of greater than three (3) days will be filed at the City Manager's level of the grievance procedure. If the issue is not resolved within fifteen (15) days of referral to this step, the procedures hereinafter specified may be invoked.

35.8.3 No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days of the time at which the affected employee was notified of such action in writing. If the City Manager, in pursuance of the procedures outlined in Section 35.2.4 above, resolves a grievance which involves suspension or discharge, he or she may agree to payment for lost time or to reinstatement with or without payment for lost time.

35.8.4 Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding on both parties, to the extent permitted by the Charter of the City.

This Side Letter of Agreement is executed this _____ day of _____, 2008, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

FOR IBEW/LOCAL 1245

CITY OF BERKELEY

Dennis Seyfer
Assistant Business Manager
IBEW Local 1245

Phil Kamlarz, City Manager

Lynne Morel
Business Representative
IBEW Local 1245

David W. Hodgkins
Director of Human Resources

Margarita Zamora
Sr. Human Resources Analyst