PORTERVILLE CITY COUNCIL MINUTES
ADJOURNED MEETING - NOVEMBER 23, 2004
CITY HALL CONFERENCE ROOM
6:00 P.M.

Call to Order at 6:04 p.m.
Roll Call: Council Member West, Mayor Pro Tem Irish, Council Member Hamilton, Council Member Stadtherr
Tardy: Mayor Martinez arrived at 6:15 p.m.

Pledge of Allegiance Led by Mayor Pro Tem Irish

ORAL COMMUNICATIONS

• Porshe Boudreaux, 425 East Mill, voiced concern with the City’s policy on water service disconnects, particularly with respect to staff allegedly informing customers of inability to contact field personnel. She commented that she believed that the staff’s actions were inappropriate as she believed she was lied to, and requested that Council address that policy.

Mayor Pro Tem Irish informed Ms. Boudreaux of Council’s inability to discuss the issue that evening, since the issue was not a part of the noticed agenda. He then requested that she provide her contact information to Mr. Longley, and indicated that Mr. Longley would contact her the following day. Staff then made copies of the Ms. Boudreaux’s documents and returned the originals to her.

SCHEDULED MATTER

1. Review of Meyers-Milias-Brown Act as the Local Agency Collective Bargaining Law

City Manager John Longley introduced the item and explained that the meeting that night had been scheduled essentially as a session to provide background information regarding the Meyers-Milias-Brown Act (“MMBA”). He then requested that Deputy City Manager Darrel Pyle introduce the guest speakers for the evening.

Deputy City Manager Darrel Pyle introduced Dr. Ken Caves, who Mr. Pyle explained, assisted the City of Porterville in labor relations and negotiations. Mr. Pyle indicated that Dr. Caves also currently represented the City in an outstanding charge before the Public Employment Relations Board (“PERB”) which would be heard on December 2, 2004 in Sacramento. Mr. Pyle then introduced Sarah Wolfe, who he explained was an attorney affiliated with the City Attorney’s firm who had practiced labor law for approximately the past twenty to twenty-five years. Mr. Pyle explained that Ms. Wolfe would be able to assist Council with any questions Council might have regarding the legal processes that could result from the actions of the MMBA. He stated that Dr. Caves would share with Council and staff how the MMBA related to the meet and confer process and he would also address various recent changes in legislation. Mr. Pyle then turned the floor over to Dr. Ken Caves.

Dr. Caves first confirmed that each Council Member had been provided the Pocket Guide to the Meyers-Milias Brown Act and the Pocket Guide to Unfair Practices - California Public Sector, both published by California Public Employee Relations. He explained that the MMBA was the Statute under which the City of Porterville bargained collectively, pointing out that it set out definitions and the basic guidelines for the meet and confer process, and had just recently come under the jurisdiction of the PERB. He indicated that other collective bargaining bills that were administered by the PERB included the Higher Education Employment Relations Act (“HEERA”), the State Employment and Relations Act (“SERA”) and the Educational Employment Relations Act (“EERA”). He explained that the PERB set rules, regulations,
and policies similar to what Councils and Boards set, and referred Council to page 15 of the Pocket Guide to the MMBA, which provided a brief summary of the Act. He explained that the MMBA promoted full communication between public employers and their employees in order to provide a reasonable method for resolving disputes regarding wages, hours, and other terms and conditions of employment. He explained that the purpose of the MMBA was to also promote the improvement of personnel management and employee/employer relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and to be represented by those organizations in their employment relationships with public agencies. He indicated that this meant that employees could join various groups and have different organizations represent them as a part of the meet and confer process. He explained that Section 3501 specifically defined “employee organization,” “recognized employee organization,” and “public agency.” He stated that the Statute also addressed mediation, which was defined as “an effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms of conditions of employment between representatives of the public agency and the recognized employee organization, or recognized employee organizations through interpretation, suggestion and advice.” Dr. Caves explained that either party could declare impasse, as was the case with the City and the three bargaining units. With regard to the City, he explained, mediation had been scheduled with mediator Ron McGee from the State Mediation and Conciliation Service, and the mediation was to be held on November 24, 2004. He indicated that mediation was confidential, informal, and provided an opportunity for the parties to sit down with a representative to negotiate. He pointed out that the mediator was a State employee, and was provided by the State at no charge. He stated that this “no cost” arrangement had been negotiated as an inter-agency agreement between the Division of Industrial Relations State Mediation and Conciliation Service and agencies throughout the State of California. He explained that if there had been a cost for mediation, each party would be obligated to pay an equal portion. He then stated that the mediation process was an attempt to reach resolution on those matters yet to be resolved, pointing out that if there were areas of tentative agreement between the parties, those would be set aside. He explained that the mediator would initially sit down with both parties to discuss and identity the issues in dispute, and then worked separately with the parties in an attempt to reach an agreement. He explained that the main purpose of mediation was to reach an agreement that could be ratified by the employer organization and the City Council.

Dr. Caves then went on to explain that the Board, as defined in the MMBA, referred to the Public Employment Relations Board (“PERB”), established pursuant to Section 3541. He highlighted several provisions of the Statute, including “agency shop,” which he explained was detailed in Section 3502.5. He explained that an “agency shop” referred to an arrangement that required an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization’s service fee in an amount not to exceed the standard initiation fee, periodic dues and general assessments of the organization. He explained that per the Statute, an agency shop could be implemented by a showing of support of the bargaining unit through an election, which was typically conducted by the State Mediation and Conciliation Service. He stated that a majority of voters could approve that an agency shop provision be drafted into a Memorandum of Understanding (“MOU”).

With respect to Section 3504, Dr. Caves indicated that this section addressed “scope of representation,” which he stated were the areas that the meet and confer process covered. He indicated that per the Statute, the scope of representation included “all matters relating to employment conditions and employee-employer relations, including but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order.” He then suggested that this definition was vague and pointed out that there had been many court decisions over the course of many years that had defined what was actually within the scope of representation. He stated that the courts
had determined that many things fell under the scope of representation, pointing to the myriad of issues that could arise from the phrase “and other conditions and terms of employment.”

Deputy City Manager Darrel Pyle clarified that in an attempt to clearly define the scope of representation, many years ago the City of Porterville had established an employer-employee resolution, commonly referred to as Resolution 75-2000. He explained that Resolution 75-2000 set out rules by which the City conducted its employer-employee relations, and described the responsibilities of management and the authority of the Council in employer-employee relations, such as in identifying the size of the work force and the level of service to be provided. He stated that in the current round of meet and confer, City staff had asked its attorney to update Resolution 75-2000 to incorporate all of the current legislative changes. He pointed out that this document was an element currently being discussed in the meet and confer process.

Dr. Caves referred Council to the back section of the Pocket Guide which provided various cases relating to scope of representation and scope of bargaining. He explained that the scope of representation and bargaining were considered “grey areas.” He emphasized that a detailed list of issues that could be discussed was not available, but asserted that if a particular item could be reasonably related to wages, hours, or other terms of conditions of employment, then that item must be discussed at the bargaining table.

Dr. Caves then discussed Section 3505 regarding “good faith meet and confer” which was defined as “a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by other party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption of the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, and when such procedures are utilized by mutual consent.” He stated that the purpose of this section was to set up a time during which all items could be discussed and resolved prior to the adoption of the public agency’s budget. However, he stated, because of the City’s dependency on State funding, the amount of funds available prior to the approval of the State budget was unknown. He pointed out that this was true of all agencies, and that starting the process and being able to complete the process prior to the adoption of the final budget – through mediation, impasse, or whatever procedure was employed – was not always realistic. He explained that if an agreement had been reached, a MOU would be drafted, ratified by both parties, and then become the “rules of the game.”

Dr. Caves then explained that the PERB administered the provisions of the MMBA, and also considered case law and local rules applicable to the parties, which he contended made the Board’s task monumental. He stated that other sections of the MMBA addressed the definitions of employees, and identified the rights of employees in terms of dues deductions and release time for designated representatives of the organization to sit and meet and confer with representatives from the City.

City Manager John Longley requested clarification of the Council’s authority relating to taking action after a lengthy, yet unsuccessful, negotiation.

Dr. Caves responded that if mediation had been agreed to by the parties, and such mediation had been unsuccessful in gathering a resolution, then the last, best and final position would be interchanged. He explained that at that point, if an agreement could not be reached, the Council could unilaterally adopt the last, best and final position. He stated that this would not be incorporated as a MOU, but rather as a policy of administration which would be applicable for only a one-year period. He explained that the employee representatives had the right to return to negotiations within a one-year period to begin the process again. He explained that this approach was a very short term resolution to bring about closure in the meet and
confer process, and pointed out, however, that in terms of public safety, arbitration might be employed. He stated that an agency could request “binding interest arbitration,” which was increasingly being utilized by cities that sought to bring closure to the meet and confer process but did not wish to proceed unilaterally. He stated that in binding interest arbitration, a “third party mutual” or a panel of third party mutuals would hear the positions of both parties, then determine which proposal was best, making its decision on an item by item basis. The arbitrator’s decision would then become the provisions of the MOU. He stated that this option did exist, however he believed there was some question as to whether the arbitration provision applied to charter cities, such as Porterville. He deferred that question to Council.

In response to Mr. Longley’s question, Dr. Caves clarified that mediation was an available option, and explained that if the parties had agreed to mediation, then both parties had an obligation to conduct said mediation prior to unilateral adoption. He explained, however, that by local rule, the parties might not be required to attend mediation, but rather they might be able to exchange their last, best and final position. He suggested that the City’s local rule might address it differently. Dr. Caves then confirmed that if mediation had been unsuccessful, a City was not required to take unilateral action, but rather that this approach was merely an option available to Council. He suggested that the parties could continue in mediation, or take no action at all. He pointed out that in the case of Porterville, all parties had agreed that mediation was an appropriate step.

Deputy City Manager Darrel Pyle pointed out that Resolution 75-2000 was silent on the subject of an impasse procedure, therefore that issue automatically deferred to the MMBA.

In response to Mayor Martinez’s question, Dr. Caves indicated that the process did not include fixed time frames to which the parties were required to adhere. He stated that while the process should not continue into eternity, there must be a “reasonable” amount of time between each step of the process in order to meet, discuss and explore all of the possibilities for agreement. He explained that the PERB would determine what was “reasonable.”

Dr. Caves then referred the Council to Page 9 of the Pocket Guide which outlined unfair labor practices. He explained that unlike other statutes, the MMBA did not enumerate “unfair practices,” however, the PERB had enacted regulations that did. Those regulations, he explained, were set out in PERB Regulations 32603 and 32604, with 32603(a) through (g) pertaining to the employer, and 32604 (a) through (e) pertaining to the employee organization. He stated that those regulations were also detailed on a “guideline insert” published by the PERB. Dr. Caves then indicated that according to PERB Regulation 32603, it was an unfair practice for a public agency to:

(a) Interfere with, intimidate, restrain, coerce, or discrimination against public employees because of exercising their rights guaranteed by Government Code Section 3502 (the right to form, join, and participate, or refuse to join or participate, in the employee organization), or by a local rule adopted pursuant to Government Code Section 3507;

(b) Deny to employee organizations rights guaranteed to them by Government Code Sections 3503 (the right of the employee organization to represent its members), 3504.5 (the right to be given notice of the adoption of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation), 3505.1 (the right to have the parties’ negotiated agreement memorialized in a written memorandum of understanding), 3505.3 (the right to reasonable release time when formally meeting and conferring with management representatives), 3507.1 (rules regarding unit determination and representation
elections), 3508(d) or 3508.5, or by any local rule adopted pursuant to Government Code Section 3507;

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code Section 3505 (which obligated that parties to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment), or any local rule adopted pursuant to Government Code Section 3507;

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to, or in any way encourage employees to join any organization in preference to another, in violation of rights guaranteed by Government Code Section 3502, or 3508(c), or any local rule adopted pursuant to Government Code Section 3507;

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code Section 3505 or 3505.2 (agreed upon mediation) or any local rule adopted pursuant to Government Code Section 3507;

(f) Adopt or enforce a local rule that was not in conformance with the MMBA;

(g) In any other way violate MMBA or any local rule adopted pursuant to Government Code Section 3507.

In terms of employee organizations, Dr. Caves explained that pursuant to PERB Regulation 32604, it was an unfair practice for an employee organization to:

(a) Cause or attempt to cause a public agency to engage in contact prohibited by the MMBA or by any local rule adopted pursuant to Government Code Section 3507;

(b) Interfere with, intimidate, restrain, coerce, or discriminate against public employees because of their exercise of rights guaranteed by Government Code Section 3502 (the right to join or abstain from joining an employee organization), or by any local rule adopted pursuant to Government Code Section 3507;

(c) Refuse or fail to meet and confer in good faith as required by Government Code Section 3505 or by any local rule adopted pursuant to Government Code Section 3507;

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code Section 3505 or 3505.2 or required by any local rule adopted pursuant to Government Code Section 3507; and

(e) In any other way violate MMBA or any local rule adopted pursuant to Government Code Section 3507.

Mr. Pyle questioned the extent to which the PERB could enforce the Regulations and questioned what remedies were available to the PERB.

Dr. Caves responded that the PERB had been initially designed to have five (5) members, and that it was currently operating, and had been for a number of years, with only three (3) members due to budgetary constraints. He stated that there were three (3) regional offices located in Sacramento, San Francisco, and Los Angeles. He explained that Tulare County fell under the jurisdiction of the Sacramento regional office, and pointed out that the Sacramento Regional Office was in the same building as the State Headquarter. He stated that PERB’s jurisdiction was to administer the various statutes. He explained that if an unfair labor practice claim had been filed against the City, and the City had been found to be in violation, PERB would require the City to post notice throughout all of the City’s facilities that it had violated a particular provision.
Attorney Sarah Wolfe added that the notice would need to be posted for a specific period of time, the length of which would depend on how serious the PERB determined the violation to be.

Dr. Caves pointed out that financial penalties could also be imposed by the PERB, including interest penalties, which he estimated were currently approximately six percent (6%). He reiterated that the remedies available to PERB were dependent upon the allegation, as well as on the subsequent determination made by the PERB. He clarified that penalties imposed by the PERB were enforceable by Court action.

In response to Council Member Hamilton’s question, Dr. Caves confirmed that in the event that an employee organization was found to be in violation, the PERB would hold the employee organization liable, not an individual employee.

In response to Mayor Pro Tem Irish’s question, Attorney Sarah Wolfe explained that the legal definition for “good faith” was a subject normally defined by a particular circumstance. She explained that good faith in one instance might not be good faith in another instance. For example, she stated that one court had determined an employer to be bargaining in bad faith because it had refused to deduct dues on behalf of an employee organization. She stated that the determination of good faith would depend upon the circumstances of the case, the history of the bargaining unit, current law, ordinances, resolutions, employee-employer committees, etc. She explained that the PERB would view a continually contentious relationship between the parties somewhat more differently than it would if history between the parties showed a more a amiable relationship that suddenly went awry. Ms. Wolfe stated that the PERB would look to find out why the relationship between the parties had suddenly changed, such as a changed circumstance that might have impacted the relationship. She reiterated that good faith was extremely hard to define, and that it truly depended on individual circumstances.

Dr. Caves added that the PERB also considered how the parties approached the issue at hand. He stated that while “no” was a legitimate response, the PERB would look to rational reasons for reaching such a decision. He stated that, of course, a party did not have to agree with every proposal, however, how that party said “no” was more the issue in determining whether a party was acting in good faith. He surmised that if a party participated at one meeting and rejected everything, and then declared an impasse, the PERB might question whether that party acted in good faith.

Attorney Wolfe added that she believed that the PERB considered whether each side gave an agreement between the parties a chance to happen.

Council Member Hamilton questioned whether a party that attended numerous meetings yet never negotiated to a middle ground might be considered to be acting in bad faith.

Dr. Caves explained that a party was not required to “meet in the middle,” explaining that negotiating was a “give and take” process.

Attorney Wolfe clarified that the PERB did not necessarily look to whether an agreement “somewhere in the middle” took place on wages, for example. Instead, she explained, the PERB would look at the entire negotiation process, as opposed to whether there was a mutual “give and take” on one particular issue.

In response to Mayor Martinez’s question, Dr. Caves explained that if circumstances changed, the parties could modify their positions, however changing positions was generally not recommended. He warned that a party would not want to be accused of regressive bargaining. He said in some
instances, a third or fourth proposal might actually be greater in demand than the initial bargaining proposal, which he explained might be inadvertent, possibly caused by a miscommunication by the negotiating party or by a data misinterpretation by the practitioner.

Attorney Wolfe pointed out that the parties should work towards a sharing of information, that is, an understanding of the basis for which the other party took a particular position. She stated that even though an employer might not agree with the employee organization, or vice versa, the parties should at least understand the other party’s position and believe that the information being given is accurate and complete. She stated that if parties then reached an impasse, at least they would be able to state why they did not reach an agreement.

Council Member Hamilton questioned if the PERB also considered the tone of language utilized by the negotiating parties. He then pointed to what he perceived was an aggressively-written letter received by Council regarding negotiations.

Dr. Caves responded that he believed everything had to be put into context. He explained that certain people presented information in a dramatic and forceful way, while others approached the same topic in a calmer manner. He stated that everyone brought personality to the table, and that there were two factors that had to be looked at in every negotiation, one being the issue that was being discussed, and the other being the people discussing that issue. He stated that it was necessary to separate the issue from the people so that the issue could be addressed without getting involved with the personalities of the people, which he asserted, at times could be an art form. Dr. Caves then pointed out that negotiations typically involved a great deal of emotions, stating that often times, people came to the bargaining table looking for increases that would affect their lives. He stated, for example, it was much easier for him to purchase a car for somebody else rather than to purchase a car for himself.

Mr. Pyle pointed out that interest-based bargaining attempted to separate the people from the issues.

Attorney Wolfe commented that some people might argue that a particular approach was aggressive because he or she wanted to emphasize the importance of a particular issue.

In response to Mayor Martinez’s question, Dr. Caves explained that most items could be shared at the table without risking a breach of confidentiality. He stated that for the vast majority, even if the issue dealt with a single classification, it generally affects more than one employee. He explained that typically provisions were not negotiated that might only affect one employee.

Dr. Caves then concluded his presentation and turned the floor over to Mr. Longley.

Mr. Longley stated that staff had nothing further for Council. He stated that the study session that evening had been scheduled to provide an opportunity to review and discuss the general parameters of the Meyers-Milias-Brown Act and the meet and confer process. He stated that such discussion might be an item that could be supplemented from time to time at Council’s direction.

Mayor Pro Tem Irish commented that the Council wished to be fair with the bargaining units and fair with the tax payers at the same time.

In response to Mayor Martinez’s request, Mr. Pyle indicated that staff would provide Council with copies of the insert from the Pocket Guide.
Mr. Longley commented that as it related to meet and confer, the MMBA process was just that, a process. He summarized that the MMBA required that the parties not merely go through the motions of the various steps within the process, but to actually commit to and mean each of those steps. He stated that the evening’s meeting was to first fundamentally understand what those steps were.

Mr. Pyle commented that he believed that each party would get out of the process what that party put into the process. He stated that the greater the effort put into the process, the greater the likelihood of producing a memorandum of understanding in the end.

Council Member West commented that through the years, the City had a good relationship with its employees and pointed to the budget crisis as being an obstacle in the current negotiations.

CLOSED SESSION


The Council convened to Closed Session at 6:53 p.m. and reconvened at 7:30 p.m. with no action to report.

ADJOURNMENT

The Council adjourned at 7:30 p.m. to December 6, 2004, 6:00 p.m.

_________________________________________________
Patrice Hildreth, Deputy City Clerk

SEAL

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Pedro R. Martinez, Mayor