

MINUTES
City of Guadalupe

Special Meeting of the Guadalupe City Council
Tuesday, November 2, 2021
6:00 pm
City Hall, 918 Obispo Street, Council Chambers

1. ROLL CALL:

Council Member Liliana Cardenas
Council Member Gilbert Robles
Council Member Eugene Costa Jr.
Mayor Pro Tempore Tony Ramirez
Mayor Ariston Julian

All were present. (The abbreviation "CM" is being used for Council Member in these minutes.)

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. COMMUNITY PARTICIPATION FORUM

Each person will be limited to a discussion of three (3) minutes or as directed by the Mayor. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. City Council may direct staff to investigate and/or schedule certain matters for consideration at a future City Council meeting.

There were no requests to speak.

REGULAR BUSINESS

5. Consideration of City of Guadalupe Firefighter's Association, International Association of Fire Fighters, Local 4403 Memorandum of Understanding Tentative Agreement.

Written Report: Emiko Gerber, Human Resources Manager

Recommendation: That the City Council approve the tentative agreement for a Memorandum of Understanding with the International Association of Fire Fighters, Local 4403 for a three-year period retroactive to 07/01/2021 through 06/30/2024.

Emiko Gerber, Human Resources Manager, briefly explained the tentative MOU with the International Association of Fire Fighters, Local 4403 (hereinafter referred to as the "Association"). She then turned things over the Ché Johnson, attorney with the law firm, Liebert, Cassidy & Whitmore, who is

representing the City in negotiations. Mr. Johnson explained that the City has been in negotiations with IAFF for over two (2) months now. He said, "The last round of proposals offered that Association included the City's 'Last, Best, and Final Offer' (LBFO). We thought that the Association wouldn't accept the LBFO and we then declared impasse in the negotiations. We were prepared to go through impasse procedures including potentially fact finding. But before the timeframe for fact finding occurred, the attorney representing the Association sent an email saying the Association was willing to accept the City's LBFO."

Mr. Johnson went on to explain that the Council has before them the LBFO that was accepted and contained the following provisions: 1) 3-year term; 2) change from the current 14-day FLSA pay period to a 28-day FLSA pay period. An important part from the City's perspective is that the evaluation period to determine if the fire fighter has worked overtime is doubled = less of a chance for fluctuation within a 28-day period where we can normalize the schedule and better control overtime; there's also the reopener clause if overtime continues beyond the approved budget, the parties can reopen the agreement and consider other cost-saving measures, and 3) shift trades, allowing employees, with prior approval of the City, to trade shifts that will not impact overtime.

He further said, "In exchange for the change from the 14-day FLSA pay period to a 28-day FLSA pay period, there were wage increases as follows: 1) Year 1 = Status Quo; 2) Year 2 (FY 22/23) = 2.0%, and 3) Year 3 (FY 23/24) = 2.5%. There are significant costs the department has seen in overtime. This will start to correct that overtime." The discussion was turned back to the Council.

CM Ramirez said, "I have a couple questions, not on the actual MOU but on the health of our finances. Currently, with the current MOU, we're at 30% overage. We be should at 25% now. Looking at the LBFO, there are a lot of things that are currently in place that will make an impact. But will it be a significant impact to make sure that at the end of the fiscal year, we're not going to be over the budget, specifically with overtime? And it's also not touching incentives."

Ms. Lorena Zarate, Finance Director, responded, "There will be savings from the FLSA change in the 28-day period. Also, there will be \$113,000 reimbursed from the mutual aid agreement. Estimating what the year would be with the changes in the tentative agreement, we still would be over budget in overtime at the end of this fiscal year."

CM Ramirez said, "Given that things are unpredictable, particularly with things in the fire world, looking at being pulled away for mutual aid, someone gets hurt or sick, etc. We're dealing with that on the police side when someone gets pulled away for a time, having to cover staff. MOU doesn't necessarily address all that we have on there. Also, another part of this is that when this was negotiated, in good faith, we didn't have all the answers on the American Cares Act either. One of the things I'm trying to see the larger picture where I can give the okay is on the Battalion Chief. This leaves no room for anything like that. To add anything for sustainability down the line."

Ms. Anna Marie Michaud, City Treasurer, asked, for clarification on the shift trade language in the tentative agreement. Mr. Johnson said, "The shift trade language we adopted is pursuant to the Fair

Labor Standards Act (FLSA). The general rule, according to FLSA, when someone is eligible for overtime, all hours worked should be paid. But in Section 207, there is an exception to that general rule. Fire fighters look at hours "scheduled to work" that are traded to determine overtime, not "hours worked". That would be another mechanism to help reduce overtime under the FLSA. That language was not in the current MOU."

CM Cardenas, "Going back to how the information on the estimated year-end line item for overtime, it says it doesn't include step increases and additional incentives. Why would that be under the overtime line item?"

Ms. Zarate said, "Receiving additional incentives equates to an increase in the hourly rate. If the employee worked overtime, the overtime rate would include incentives. Step increases are not automatic but are based on performance. They may or may not receive a step increase which are normally 5.0%. Not knowing if they would receive step increases, that could be more in the next years. So, those are the factors."

Mayor Julian asked, "Do we have definitions for what's applicable for incentives?" Ms. Gerber said, "Yes, in the current MOU, there are twelve defined certifications or a potential of up to 18% of incentive pay." CM Ramirez then said, "The tentative agreement we have here doesn't address incentive pay. Ms. Gerber added, "No, it doesn't address incentive pay. There are two categories, education and certificate." CM Ramirez continued commenting, "So, it's 18% above what a base salary is. Potentially compounded. Right?" Ms. Gerber said, "Correct. Compounded with the potential of 23% on top of base rate with educational incentives."

The mayor asked if we had information on where the Fire staff was in terms of incentives. Ms. Gerber said, "Some employees are in the middle. 12% is the highest now paid in incentives."

CM Cardenas referenced the staff report saying, "It says that the City will likely reopen negotiations if overtime is exceeding the budget. Is this because we're already exceeding the overtime budget? Why is that?" Ms. Gerber said, "Based upon our YTD for the 1st Quarter, there was \$110,000 approved in overtime but \$90,000 has been budgeted for the full year. We will receive a reimbursement which is an estimate based on calculated base wage with benefits, I believe. The \$113,000, even though we paid out \$110,000 in overtime, also includes benefits, as well. We applied that to the entire year for the projection and Lorena was conservative with those figures. That's some of the data we wanted to review with the Association before we moved forward with this tentative agreement. However, they didn't accept our invitation to meet and review those figures."

Mayor Julian then said, "So, it's an unknown." Mr. Johnson added, "Correct. This agreement would allow us to come back to the table and reopen this agreement to try and achieve more cost savings. One of the council members brought up the issue of incentives, specialty pay. That was something in our original proposal and were talking to the Association about, having a future discussion on curtailing and reducing costs of some of those proposals. But the Union was very much against that and was part of the LFBO. We did strike that provision. But the reopener would allow us to come back

and reopen any economic part of the Agreement if the overtime continues to be above the budgeted amount.”

CM Costa, Jr. said, “On the OES mutual aid when they go out on a strike team, they only reimburse for strike team hours while out in the field and not for the overtime here to cover. Is that right?” Ms. Gerber said, “That is correct. There is no reimbursement for coverage at the local station.”

CM Ramirez then asked, “The reopener is part of the agreement. If the Council denies this tentative agreement, then what happens?” Mr. Johnson responded, “Staff is recommending the proposal. If the Council rejects this tentative agreement, it sets the parties back to the table to continue negotiations. The status quo or current system would be in place. There would be no negotiated protections in place for curtailing overtime, such as shift trades. I would anticipate that the negotiations would be very difficult. It would be very foreseeable that we would probably reach another impasse. But we would essentially be sent back to the negotiations table to try and negotiate terms that the City Council would find agreeable.”

CM Cardenas also asked, “If staff believes going back to negotiations will be tough, we already know that. Is that still anticipated?” Mr. Johnson said “I think negotiations will be difficult because these negotiations have been hard. Employees don’t like to take pay cuts, and they don’t like to see the amount of their overtime going down. If the Council rejects this agreement, that will even be harder than if we used the reopener of the agreement to come back to the table.”

CM Costa, Jr. asked, “Fire doesn’t want to do a different schedule on their shifts?” Mr. Johnson said, “Correct, we originally proposed an entirely different schedule. We had looked at a schedule that we thought would be the most efficient way to control overtime. The Union was completely against that schedule. They didn’t want that proposed schedule. This idea of the FLSA pay period change was during the back-and-forth process of negotiations and was the most acceptable term that the Union was willing to accept.”

Mayor Julian said, “On page 2 of 3 on the staff report, ‘Fiscal Impact’, there’s a lot of unknowns that I see. We already know that we’re over in overtime. There’s a 10%+ increase with different health benefits, and everything else. It’s a little spooky not to have a handle on finances as we look forward. There’s an alternative that’s noted here in terms of not approving the tentative agreement. What triggers, in terms of time, then coming back to the table to negotiate?”

Mr. Johnson said, “If it was the Council’s direction to reject the proposal, then we would send out a notice to the Union immediately. I would anticipate that they would be reluctant to come back to the table. They may even threaten an unfair labor practice charge. But consistent with the City Council’s direction, staff will do exactly what the Council wants us to do. We’d be very vigilant in moving forward in starting negotiations and try reaching an agreement the Council will accept. In terms of a timeframe, we would at least need to assume about a period of three-to-four months of additional negotiations. I’m being a little conservative there by overestimating but I think that’s a fair estimation. An additional three-to-four months.”

The mayor then asked, "What triggers an unfair labor practice?" Mr. Johnson answered, "I'm not saying there'd be any merit to it but I think it would be naïve to assume that the Association wouldn't try to defend their position as strongly as possible. I don't know what the basis of that would be, but I do believe that we have been negotiating in good faith and have tried to reach an agreement in good faith. It's the Council's discretion to either accept or reject the proposal. As the staff report indicates, the City Council has the ability give us direction and send us back to the table if that's the desire of the Council. However, during the period while we're still in negotiations, the overtime costs will continue."

Mayor Julian said, "Staff has looked at the alternatives and has given us this format in terms of approving with an alternative. Do we have enough information that we would benefit financially if we denied or rejected the tentative agreement?" Ms. Gerber, "Staff has outlined some additional contributing factors that we'd like to bring to the table. We've talked about incentives, including education pay, and restructuring that program. There's Article 13D regarding overtime. Currently, overtime includes vacation, sick leave, compensatory time off, etc. Those are some contributing factors we'd like to address with the Association. Also, minimum staffing. At the current time, the MOU says that if an employee is out for vacation or sick leave purposes, another employee needs to fill in. A 1-to-1 ratio. There are other areas we can look at that can be contributing factors to the overtime we're currently seeing."

City Attorney Sinco questioned whether the mayor's question was answered and asked the mayor if he wanted to rephrase it. Mayor Julian asked again, "Where would we be financially if we went with this versus if we stayed at the current rate?" Ms. Zarate said, "If the Council denies or rejects the agreement, we'd look at the estimated costs for this fiscal year, including COLA projections. There may be step increases and additional certifications that would increase the costs, in addition to additional attorney costs for the negotiations." Mayor Julian said, "You need a crystal ball."

CM Cardenas asked, "The \$113,000 reimbursement for mutual aid. Does that cover a large portion of the overtime?" Ms. Zarate said, "I think so. Chief said most of the salary is covered for the employee(s) out in the field, dollar-for-dollar all related benefits, but only regular salary for the employee(s) backfilling at the station here."

CM Cardenas continued asking, "Is the overtime mostly for mutual aid?" Ms. Zarate said, "Yes, for the first three (3) months of the current fiscal year, it is mostly mutual aid." CM Robles asked, "Can you define mutual aid?"

Chief Cash added, "Let me answer the first question. Yes, in this situation, most of the overtime is mutual aid. But because of the way it's structured, there's a continuing wave of overtime. They're paid automatic overtime. That's the issue." Ms. Gerber explained the current 2/4 schedule with the built-in overtime. Two (2) days on/four (4) days off schedule as well as anticipated overtime with the current schedule versus actual overtime. She said, "We were slightly over budget at the start of the quarter, and it accelerated which was due to mutual aid fighting the wildfires." The mayor then said, "So, the projection is \$87,000 difference over the budget." Ms. Gerber said, "Yes, at this time."

Chief Cash then said, "A correction I want to make is when we say, 'mutual aid'. I look at this in two different ways. There's actual mutual aid we have for Santa Barbara County to where we go and help our neighbors. That's the one we have to adhere to. As for wildfires, that's a 'if we can'. I have the option not to send a team to go to fight those wildfires. We can control that aspect of it, but it's the automatic overtime that I have no control over that exacerbates the budget."

Mayor Julian asked, "Given that scenario, if we look at the alternative to go to back to the table, again looking at the crystal ball, would it result in reduction in overtime?" Ms. Gerber answered, "I don't know if Lorena could answer that question effectively. We anticipated overtime for sick leave and vacation coverage. We itemized mutual aid separately as it's a variable that could or could not affect us. But we should factor in coverage for sick leave and vacation coverage. The numbers we came up with are reasonable. I think that's a realistic approach because we have one Fire Captain and one Fire Engineer per 48-hour shift. The number of hours used to project this number is a little bit lower than the number of actual hours used for sick and vacation coverage for last year. One of the drivers here is incentive pay."

The mayor then said, "So, we have a choice. To me, it seems there are more questions than there are answers. More problems if we accept it, that's my opinion, if we don't go back and start to look at the other elements within this as we proceed. Of course, Fire is important. All of public safety is important. We've made great strides bringing up their pay accordingly. Just seems there's an excessive amount of resources going...we receive Measure N monies and others, but it seems there's a leak in terms of where those monies are going. We have to anticipate that money isn't going to be here all the time. If we see that it's being jeopardized based on what we're seeing here, it brings up the question if we should go back and make this more finite so there's a better financial outcome for the City."

CM Cardenas said, "My concern is if we need to go back to negotiations, the Association already said, it says here, that they're not willing to reopen negotiations. Right?" The mayor commented, "Which means we go back to impasse." Mr. Johnson said, "To be clear about that point, the Association wanted this agreement in place first before they had any other discussions. We would be very aggressive getting the Union back to the table. If we need to, we might even have the City look at an unfair labor practice if they were refusing to bargain. But as I said earlier, it will be very difficult discussions."

CM Ramirez added, "This is not to single out any group. I'm falling closely what the mayor's saying. The Council must be stewards of the entire treasury. Looking at one aspect of it, there's more that could be done. We're all-important parts of the mechanism to make it work. When one area's not working, it affects the others. No matter what the other agreements were that would be before us, we'd have to take the same critical look, regardless." The mayor then said, "And I think we have. We're looking at our funds pretty tightly. So, the recommendation is approving the tentative agreement or not."

Mayor Julian asked, "Is there a motion to approve the tentative agreement as specified?" There was no response.

The mayor then asked, "Is there a motion to not approve the agreement as specified?" **Motion made by Council Member Costa, Jr. and seconded by Council Member Ramirez to not approve the tentative agreement between the City of Guadalupe and the International Association of Fire Fighters, Local 4403. Ayes: Julian, Ramirez, Cardenas, Costa, Jr. Robles Noes: 0 5-0 Passed.**

Mr. Johnson said, "Thank you, Council. We'll be updating you on the status of negotiations in the future."

Mayor Julian added, "These are tough decisions for both City staff and the Fire staff. We work with the community and Fire and public safety knows that. It's never our position to negate anybody's pocketbook in terms of their livelihood. But as Antonio mentioned, we must look at the overall picture where we are as a city. We're coming out of some doom and gloom over the last six (6) years. I think we need to keep the shoulder to the wheel to make sure that everything that comes up, expenses, are brought up to us by the staff. Brought to us for decision-making. It's not an easy decision."

CM Cardenas said, "I want to say thank you to the staff, both sides. Negotiations are difficult. I know you reached an agreement, but we do need to oversee everything. So, thank you to all our staff. I know you've met for quite some time, but this is just something we need to make sure. We're continuing to progress and continuing making that progress we've been doing with our finances."

Mayor Julian asked if there was any further discussion from Council or staff. CM Costa Jr. said, "We're five (5) council members up here. And the staff has to do what they have to do. We appreciate it. But the five (5) of us up here. We're in a position where the citizens voted us in to make the right decision for our City. Not to take away anything that a prior council member said but it's time to make the best impact for the City to continue to improve financially, not waste more money in certain aspects. And we can use money to upgrade our City and not in just one particular area. It's not our intention to say that we don't believe in what anybody's doing. We don't feel that way. We have to do this for the City. That's the role of the Council. What's in the best interest for the City. A decision like this is a difficult one but one that needs to be made." Mayor Julian responded. "Thank you. Well said."

6. ADJOURNMENT

Motion was made by Council Member Costa, Jr. and seconded by Council Member Cardenas to adjourn the meeting. 5-0 Passed. Meeting adjourned at 6:42pm.

Prepared by:


Amelia M. Villegas, City Clerk

Approved by:


Ariston Julian, Mayor