

MEET & CONFER SESSION WITH APFFA

Thu., January 20, 2022

11 a.m. – 1:00 p.m. (actual 11 a.m. – 2:35 p.m.)

In attendance: Pete Martinez, Adrian Velasquez, Frank Berber, Steve Eck, Joe Markham, Jason Horne, Dana Endsley, Mary Dennis, Jimmy Studer, Elizabeth Kaylor, Pamela Hutson, Yoko Matsumoto, Jonathan Ingols, Gerald Randall, Lemuel Randolph, Dana Hathorn, Don Crowson, Kerry Sullins, Trey Yelverton, Nastasha Anderson, Jennifer Wichmann, Al Jones, Shawn Graham

Notes:

- Discussion began with procedural issues and ground rules.
- Roll call was taken of each committee. Self-introductions were done.
- All members present.

1. Updates to the Meet and Confer Process

CAO explained the ground rules handout (**A - handout**) as a preliminary document for order and decorum on how to proceed. Last page has a flowchart showing how to ratify written agreements. After the Association gets a majority consent vote, then it goes to City Council for a majority consent vote before the agreement becomes final. Asked all to review and provide Management feedback.

The Association asked for a caucus.

City Manager asked the Association to identify its five primary members after the caucus.

The meeting broke for caucus at 11:05 a.m. Meet & Confer reconvened at 11:34 a.m.

Negotiating teams were re-established:

- Management team (5): City Manager, Deputy City Manager over Fire Department serves as lead, Fire Chief as the department lead, and two Assistant Fire Chiefs. In case someone is unable to attend: Fire management would designate others and City Manager would designate another DCM. At any time, the City Manager has the right to decide who will be on the team. Total of 5, and all will be involved in discussions.
- Association team (up to 7): President Pete Martinez, Justin Robinson as lead, Frank Berger, Jason Horne, Joseph Markham, Adrian Velasquez and Steve Eck. Total of up to 7, and all will be involved in discussions.

Association made requests and comments to the ground rules. The meeting broke for caucus at 12:05 p.m. Meet & Confer reconvened at 12:51 p.m. Management made comments on the Association’s proposed ground rules changes.

ITEM	ASSOCIATION REQUESTS/COMMENTS	MANAGEMENT COMMENTS	AGREED
1.	<u>Line 1</u> – Add “City” in front of “Management”; change “Labor” to “Association.” <u>Line 3</u> – Change “five (5) Primary Members” to “seven (7) or more Primary Members.” Not necessarily limited to seven, could have more.	<u>Line 3</u> – Current verbiage reads “up to five (5).” Changing from 5 to 7 would need 4 (not 3) to meet a quorum.	<u>Line 3</u> – “up to seven (7)”

2.	Asked about the City Manager’s designated Facilitator.	City’s HR Director facilitates all meetings. If not present, City Manager designates a substitute.	No changes.
3.	Wants to record meetings. Does not believe would be part of public record. [Cited Attorney General’s 2022 Open Meetings Act Handbook (page 53, Section 551.997)] as the right of the person to record or use video camera [Subsection A, Section 8 Subsection C (rights of the public)]. Asked how soon minutes will be available.	Attorney General referenced members of the public who cannot be controlled. Association members are City employees engaged in an employment matter through the Meet & Confer process. Recordings are not prohibited. Government records generated by employees are public record subject to the retention schedule. Any employee using government equipment is creating a government record. City is recording the meeting as part of the official government documentation for the minutes, and this will be made available to the Association. Minutes are posted on the I drive once finalized, which is open to all City employees.	No changes.
4.	Asked to: (a) Define “weekday business hours.” (b) Have opportunity to extend meeting time without two-hour limit. (c) Address compensation if meetings fall on shifts. If scheduled for A-Shift and Association member is scheduled to work, requesting AP time. Ideally would happen on B-Shift (six are on A-Shift and one is on C-Shift, but Association wants all 7 at all meetings). Asked for special over-duty time granted on non-duty days for negotiation team and other specialists who attend.	(a) Weekday business hours 8am to 5pm weekdays, with exception of City holidays. (b) Agenda items and topics can be discussed over multiple meeting dates. Caucus is stated with a one-hour limit, but if either side needs more time can let the other side know. (c) Management asked: Is 4 enough? Are 7 to be covered? Asked if other parties (specialists) are to be paid as well. Will need to understand scenarios on AP compensation.	Discussion to be continued.
5.	No changes	Overtime request for negotiating team and AP time for other fire fighter experts are compensation issues. Fire Department can prioritize, as deemed appropriate, but will not be part of the negotiation ground rules.	No changes.
6.	Asked for clarification on meeting agenda items due to CMO by 8 a.m. five days prior. Prefer it be close of business day Thu. before meeting or could change to Wed. close of business day. If there’s a Monday or Friday holiday that would prolong it.	If a Thu. meeting, then five business days prior defined by 8 a.m. If Mon is a holiday, then would be by 8 a.m. Wed, not Thu. Weekends don’t count. Holidays not factored in.	8 a.m. five business days prior to the scheduled meeting.
7.	Change one hour to thirty minutes.	Thirty minutes too limiting. Prefer to stay at one hour.	Discussion to be continued.
8.	Asked to strike item and wants to know intent. Asked about intent of the remaining portion.	Wants feedback on proposed changes: first sentence reading “management reserves the right not to discuss any topic” will be	Discussion to be continued.

		<p>removed; will start with “It is presumed ...” and continue as written.</p> <p>It’s a factual statement and all other affected documents have separate approval processes. Documents will be amended to coordinate change throughout the various documents. Must comply with the Meet & Confer statute, requiring formal ratification.</p>	
9.	Define “outside the scope of negotiations.”	Will modify beginning sentences to read “City Management and the Association reserve the right not to discuss any topic. If it is determined that the parties will not likely reach an agreement on a matter or if a matter has been determined to be outside the scope of what is on the agenda, it will not be subject for further discussion, unless there is a mutual agreement to reconsider.” The last sentence will remain.	Discussion to be continued.
10.	<p>Change “thirty (30) calendar days” to “forty-five (45) calendar days” for review.</p> <p>Address the last sentence in case there’s an impasse.</p>	<p>No objection.</p> <p>Meet & Confer doesn’t require there has to be a negotiation because both sides have the ability not to discuss something and not to negotiate an item. An impasse is decided by the City Manager or his designee.</p>	Changed to “forty-five (45) calendar days.”

Management said a revised draft will be prepared, distributed prior to the next meeting for review, and be an agenda item to be discussed at the next meeting.

The Association asked for clarification on today’s agenda items. Management stated the three items can be discussed today or continued for discussion at a future meeting. The Association said its membership will be involved in the discussion about the Meet & Confer process, so what’s being presented today is not final. Management said today’s discussion is to identify what could be changed. Other agenda items can be continued to another meeting date.

The Association raised concern about a recurring agenda item that’s not being addressed under the “new” Meet & Confer process involving the signed agreement (MOU). Wants an avenue to not have a repetitive agenda item. Wants some type of mediation in the ground rules or in a signed agreement.

City Manager said that’s beyond the ground rules. If it’s not within the Meet & Confer statute, then it becomes something different (mediation, arbitration, contractual agreement, disciplinary). This is the Meet & Confer process entered into that is voluntary on everyone’s part. The outcome is voluntary on everyone’s part. A third party isn’t needed yet. Not part of the ground rules. In past with situations difficult to reach consensus or with communication issues, a mediator has been brought in to help parties

reach an agreement on the ground rules. Meet & Confer provides an opportunity but doesn't guarantee an agreement, final decision or conclusion. This process must work under the Meet & Confer statute.

The Association when there is a signed agreement, it stays in effect, as is, until both parties agree to nullify, add to it or change it. Management said that's part of the negotiation, and ground rule item 10 outlines how it becomes nullified or how it becomes process. This is a different process with a written agreement between parties, not necessarily in an SOP or in the Personnel Policy Manual. of what's in the agreement (sick policy, etc.), there's some boilerplate language that may cover some of the areas the Association wants. This will be part of discussions, not part of the ground rules.

The Association asked about several items. Management provided clarification.

- If it goes above Statute 142.153, Section 8, to also include Personnel Policy, SOPs, etc. – This doesn't exceed anything not required by law. Processes must be followed to ensure everything complies. What's agreed to through Meet & Confer would trigger changes in all the other places to be compliance.
- How Personnel Policy Manual changes will be made – Once an agreement is ratified, HR would recommend any Personnel Policy Manual changes to the City Manager, who is the only person who change that document.
- How changes to the Local Rules pursuant to 143 will now be made – If there's a Meet & Confer agreement, then 143 would be modified for Civil Service. The Meet & Confer agreement cannot be violated for a "run around" agreement. City would go by the Meet & Confer MOU written agreement. If it doesn't violate, then it could be changed. If the Association decides to bring a Local Rule item to Meet & Confer and it's agreed upon, then won't have to go through the written agreement process to get the change in the Local Rules. Changes have been made to the Local Rules since originally implemented. The Local Rules are a separate document that can still be changed if the change doesn't violate Meet & Confer. Just because it's in Meet & Confer, doesn't automatically change the Local Rules. The change only happens to address specific issues which change the Local Rules.
- How to address past issues having less than fruitful results with the Department Head (Fire Chief) over the past 12 years – The Fire Chief runs the day-to-day operations, and there won't be an agreement to address all topics on a day-to-day basis. Those decisions have managerial discretion and open to interpretation by the Fire Chief. What's important is for concerns and solutions to be clear. The Personnel Policy Manual is a collective work of past experts, while the Local Rules are newer with more room to grow and mature. Over time, all the components will ensure shared interest with other employees or Management will never be written in a contract for all matters in a complex organization. Adjustments will occur. May need to create some rules but won't always have to create a new rule to conduct the business of the City. Main objective is to have rules that can be modified upon mutual agreement, then everything gets modified. Cannot work on a Meet & Confer agreement with the Association without the Management team perspective. Mediation is happening right now. The "old" Meet & Confer process compared to the "new" process cannot jump to the end. Starting discussions about what might need to be modified, with mutually agreed upon items. Will take time to work through all the issues. Agenda item 3 was added by the City Manager to provide quick early wins for the Association in order to start resolving historic concerns and frustrations. Need some flexibility and will have to build around some of these issues. In #8 of the ground rules, these are the authorities in place today and will remain unless modified by an agreement. Could

negotiate if this could be modified without coming through Meet & Confer for an agreement. A question might be whether it could be modified if it didn't get negotiated through Meet & Confer. That's a negotiation point, not a ground rule.

- Management's right not to discuss a topic – If the Association wants an item on the agenda, then it will be brought forward for discussion. At the meeting, mutual interest can be determined.
- Chief Crowson's negotiating team in this process – It's an opportunity to solve some issues and approaches to issues. Bring those topics to Meet & Confer for discussion. If a written agreement is agreed upon, it can be ratified and implemented as standard policies and procedures. This is a welcome process.

Management said since it's 1:37 p.m. with two more agenda items that not every agenda item has to be discussed or finalized today. The options are to discuss another agenda item or continue that item's discussion to the next meeting. City Manager suggested stopping for participants get lunch plates and continue working over lunch.

Meeting stopped at 1:40 p.m. to get lunch. Reconvened at 2:08 p.m.

Management said this meeting needs to end by 3 p.m. because there's another meeting in this room. Items not completed can be continued to the next meeting.

2. Deliberation over wages, salaries, rates of pay, hours of work or other terms, and conditions of employment

No discussion.

3. Sick and Vacation Policy

Management added this item based on ongoing conversations about the high priority of this policy. Request is to change it back to how it was, and this is the start of the process to see what can be addressed.

The Association membership wants to "make right" what was taken away by Civil Service and re-establish the previous policy. Mayor Ross agreed to re-establish the old policy into one account, the current time base and establish policy to allow it. City Manager clarified the Mayor doesn't have the unilateral authority. He does have influence.

Management asked if the request is for the policy to be put back as it was prior to Civil Service (accrual, caps, etc.) to a specific date and not be subject to Civil Service law.

The Association's intent is to get time back (sellback, cap, unlimited sick accrual) and is prepared to negotiate. Wants the balances on October 30 added to the current balances, merging previous sick and vacation time into current just like when a Deputy Chief is promoted and then gets time back. DCs are covered under Civil Service.

Chief says to convert back to City standard treated as previous standard. Would need finance personnel because it's a detailed, complicated process.

HR gave an example: A fire fighter had 10 hours of vacation and 10 hours of sick leave on October 30. Those 10 vacation hours would be merged back into one current bank. Those 10 sick leave hours would be merged with sick time after Civil Service. Banks, as they are

now, would be moved into one bank, after Civil Service. The Association concurred with HR's example.

The Association said under Civil Service, it must be approved by the governing body. Wants further discussion.

Management says this would not be an old City policy plus Civil Service; it's reverting to the old City policy. Will look at the other pieces and bring this back for discussion. Restoration is also removing a counterweight to those same two topics, so it's the old way and the numbers are reconciled. Will provide the steps, so there's time to review and discuss.

City Manager brought up the ongoing litigation between the Association and the City. Looking for a pathway to reconciliation. President said they would not talk about it because attorneys are working on some type of settlement. Management was glad to hear it because there's been limited attorney-to-attorney conversations. Asked the Association to encourage its team to engage so progress can be made. Wants attorney groups to shadow this process and get on parallel tracks.

The Association reiterated the intent is for the requested change to the sick leave and vacation policy is for it to be addressed how DCs are addressed and to provide the steps to the Association before further discussion takes place at a Meet & Confer meeting.

City Manager asked about the Mayor and Council component in the solution for sick leave and vacation, whether coming to an understanding that's implemented or having a formal written agreement. The Association said if it's not covered in 143, it would be done through a Local Rule or through the Meet & Confer process.

The Association clarified that since these times were taken away through Mayor & Council if it would be the same action to un-do the Ordinance. Management said this would be a "meeting of the minds" and a proposal would be provided for the Association to review it.

This item will be continued.

The next scheduled meeting on the 4th Thursday, February 24, is an A-Shift day with six of seven Association bargaining team members on duty. Moving it to Friday, February 25, would be a B-Shift day.

Meet & Confer January 20, 2022, adjourned at 2:35 p.m.

The next meeting moved to a B-Shift day on Friday, February 25, 2022, 9-11 a.m. in the City Hall Council Briefing Room, 101 W. Abram – 3rd floor. Agenda requests and notices an agenda item may require meeting longer than two hours are to be submitted to the City Manager's Office by 8 a.m. on Thursday, February 17.

GROUND RULES FOR MEET AND CONFER NEGOTIATIONS
BETWEEN CITY OF ARLINGTON AND LABOR

1. At the initial meeting, each party (Management and Labor) will designate the Primary Members of their bargaining team. Primary Members will be able to vote on decisions. Each party may name up to five (5) Primary Members, and each Primary Member may designate an alternate. Parties must designate one Negotiating Representative and an alternate who will act as the spokesperson for their team in negotiating all aspects of the Meet and Confer Agreement (also referred to as a Meet and Confer MOU). Each party may also have in attendance advisors (i.e. Legal, Human Resources, etc.) or “interested” parties who may participate in discussion but cannot vote. *See* Texas Local Government Code 142.060, 142.110.
2. A Facilitator will be designated by the City Manager to ensure the smooth flow of discussions and maintain order during the meeting.
3. Negotiations will be held at City of Arlington, Texas facilities, as determined by the Facilitator. All meetings are subject to the Texas Open Meetings laws and will be generally pursuant to the *Robert’s Rules of Order*, as needed. Recording devices will not be used to record the meeting, but minutes will be taken, and each party may take their own notes. Should City employees create a record of a meeting with their own device, such as a phone, camera, or recorder, that information will be considered a government record and should be retained in accordance with state law.
4. Negotiations will occur during weekday business hours.
5. Negotiating Representatives will speak for their respective teams and extend common courtesy to each other by having only one person speak at a time. Team members may speak when recognized by their respective Negotiating Representative. During meetings, participants shall treat others with courtesy and respect. Inappropriate conduct will result in removal from the meeting.
6. The parties will exchange their respective statement of interests to be negotiated. The parties will exchange an electronic version in PDF format via e-mail five (5) business days prior to the scheduled meeting, or by a date agreed up by the parties.
7. Either party may call a caucus. However, the caucusing party will make every effort to avoid unnecessarily delaying the negotiations. Caucuses will normally last no more than one hour unless further time is requested. A caucus will not be the first order of business at any meeting, unless it is mutually agreed to by both Negotiating Representatives.
8. Management reserves the right not to discuss any topic. It is presumed that the Personnel Policy Manual, Department Directives, Standard Operating Procedures, Civil Service Commission Local Rules, and other applicable rules all have their own approval processes and will be amended as necessary as the result of any meet and confer consensus. *See* Texas Local Government Code 142.059, 142.109.

9. If it is determined that the parties will not likely reach an agreement on a matter, or if a matter has been determined to be outside the scope of negotiations, it will not be subject to further discussion unless there is a mutual agreement to reconsider. An impasse will be determined by the City Manager or his designee.

10. If a consensus is reached and a meet and confer agreement is successfully negotiated, then the City will prepare the final draft for review. An initial consensus will be reached when a majority of the Primary Members vote to proceed with the draft agreement. The parties will then have thirty (30) calendar days to review the agreement for errors and come to a consensus on a final version. The agreement will not be contractually binding without approval by a majority of the voting members of the designated bargaining unit and without approval by a majority vote of City Council. In the event the Council does not accept the agreement, the parties will reconvene within fifteen (15) calendar days to reopen negotiations. In the event the designated bargaining unit does not approve the agreement, the parties will reconvene within thirty (30) calendar days to reopen negotiations. *See* Texas Local Government Code 142.064, 142.114.

Initial meeting(s) to decide language of MOU

- some topics will not be discussed if no mutual interest
- some topics will not proceed if an impasse is declared
- agreed upon topics will proceed into draft MOU

Once draft MOU language is in more final form, Primary Members from Management and Labor will vote to close initial discussions and proceed forward with ratifying the MOU after a period of 30 days in which final errors are resolved.

A finalized proposed MOU will be presented to the designated bargaining unit and then City Council, and each must approve it through majority vote.

Management and Labor will continue to meet on a regular basis during the period of the MOU's term to discuss shared items of interest and select items for inclusion in subsequent MOUs.

During the period of MOU's term, amendments of the MOU may be made if ratified by both parties.