



City of Carson Report to Mayor and City Council

December 20, 2011
New Business Consent

SUBJECT: CONSIDERATION OF RESOLUTION NO. 11-141 AMENDING THE EMPLOYER-EMPLOYEE RELATIONS RESOLUTION, RESOLUTION NO. 85-107, AND COMPLYING WITH THE DECISION OF AN ADMINISTRATIVE LAW JUDGE

Submitted by William W. Wynder
City Attorney

Approved by David C. Biggs
City Manager

I. SUMMARY

Presented for consideration is a resolution that complies with the determination of an administrative law judge to “remove that part of the City’s Employer-Employee Relations Resolution (EERR) Section 8 that prohibits an employee or an employee organization from filing a decertification petition during the time period of “negotiations leading to a valid [MOU].”

II. RECOMMENDATION

WAIVE further reading and ADOPT Resolution No. 11-141, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING RESOLUTION 85-107, THE CITY’S EMPLOYER-EMPLOYEE RELATIONS RESOLUTION.”

III. ALTERNATIVES

NONE. This resolution is required by virtue of a final, non-appealable order of an administrative law judge. The City Council has been ordered to take this action.

IV. BACKGROUND

On September 8, 2010, the Carson City Employees Association (“CCEA”) submitted a Decertification Petition seeking to decertify AFSCME as the Exclusively Recognized Employee Organization for the Crafts and Trades Unit. The city was charged with processing the Decertification Petition in accordance with the city’s EERR. On September 15, 2010, the city denied the Decertification Petition as untimely on the basis that it was not filed within the authorized window period expressly specified in Sections 8 of the EERR.

CCEA submitted a written grievance dated September 24, 2010, objecting to the denial of the Decertification Petition. In a meeting with CCEA, city representatives advised CCEA that the grievance process was not the proper forum to appeal the city's decision to deny the Decertification Petition. At the meeting, the parties also agreed to submit the matter to mediation and an advisory decision by the California State Mediation and Conciliation Service (SMCS).

On October 5, 2010, CCEA submitted a written appeal of the city’s decision to deny the Decertification Petition. The City Manager referred the matter to the SMCS for mediation and an advisory recommendation, in accordance with Section 11 of the EERR. Non-binding mediation took place before SMCS mediator Loretta van der Pol on November 24, 2010.

Ms. van der Pol affirmed the city’s initial denial of the Decertification Petition in an advisory e-mail recommendation dated November 29, 2010. On January 4, 2011, the then-City Manager, Mr. Jerome Groomes, affirmed the denial of the Decertification Petition. Section 11 of the EERR provides for an appeal of the City Manager’s determination to the City Council. CCEA did *not* appeal the City Manager’s determination to the City Council.

Instead, CCEA filed a charge with the California Public Employment Relations Board (PERB) on December 9, 2010, alleging that the city’s denial of its Decertification Petition is an unfair practice, interfered with the rights of bargaining unit employees to be represented by CCEA, and denied CCEA its right to represent bargaining unit employees. PERB ordered AFSCME to be joined as a related party in the matter after both the city and AFSCME submitted motions to join AFSCME as a party in June 2011.

The city and CCEA were ordered to participate in an informal conference before PERB on March 29, 2011, which did not result in settlement. PERB then scheduled a formal hearing, which took place on July 14, 2011, before Administrative Law Judge (ALJ) Shawn P. Cloughesy. At the formal hearing, the city, CCEA and AFSCME presented evidence and witnesses in support of their respective positions.

On September 30, 2011, ALJ Shawn P. Cloughesy issued his proposed decision on the charge. ALJ Cloughesy ordered, among other things, that the city cease and desist from applying the phrase “negotiations leading to a valid MOU” in its local rules and remove that phrase from its local rules. The proposed order became final on October 26, 2011. The attached resolution complies with the ALJ’s order in all material respects.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Resolution No. 11-141 (pgs. 4-5)

Prepared by: William W. Wynder, City Attorney

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by City Council

Date _____ Action _____

RESOLUTION NO. 11-141

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING RESOLUTION 85-107, THE CITY'S EMPLOYER-EMPLOYEE RELATIONS RESOLUTION.

WHEREAS, on July 1, 1985, the City Council of the city of Carson ("City") adopted Resolution 85-107 regarding the administration of employer-employee relations and communications ("EERR"); and

WHEREAS, on September 8, 2010, the Carson City Employees Association ("CCEA") submitted a decertification petition seeking to decertify the American Federation of State, County and Municipal Employees ("AFSCME") as the exclusively recognized employee organization for the City's Crafts and Trades Unit ("Decertification Petition"), at a time when the City and AFSCME were negotiating a successor memorandum of understanding; and

WHEREAS, the City denied the Decertification Petition because EERR Section 8 prohibits the filing of decertification petitions during negotiations leading to a valid memorandum of understanding; and

WHEREAS, on December 9, 2010, CCEA filed an unfair practice charge with the Public Employment Relations Board ("PERB") alleging that the language within EERR Section 8 that the City relied upon in denying its Decertification Petition was an unreasonable regulation, which matter was taken under consideration by a PERB administrative law judge ("ALJ"); and

WHEREAS, in a proposed order dated September 30, 2011, which was subsequently finalized on October 26, 2011, the PERB ALJ determined that the language within EERR Section 8 that the City relied upon in denying the Decertification Petition was an unreasonable regulation and ordered the City to "remove that part of the City's EERR Section 8 that prohibits an employee or an employee organization from filing a decertification petition during the time period of "negotiations leading to a valid [MOU]"; and

WHEREAS, the City must comply with the September 30, 2011, PERB order and "remove that part of the City's EERR Section 8 that prohibits an employee or an employee organization from filing a decertification petition during the time period of "negotiations leading to a valid [MOU]."

NOW, THEREFORE, having carefully considered and then complied with the directives of the final October 26, 2011, ALJ Order, having considered the staff report, and all attachments thereto, the CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES HEREBY RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

[MORE]

Section 2. The City Council of the city of Carson, California, hereby amends Section 8 of Resolution 85-107, its EERR, by removing the phrase, “or the negotiations leading to,” such that the second sentence of Section 8 shall hereby read, in its entirety, as follows:

“A Decertification Petition may not be filed within one year after a valid election or during the term of a valid Memorandum of Understanding except during an “open period”: the 30-day period commencing one hundred fifty (150) days and ending one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding.”

PASSED, APPROVED and ADOPTED this 20th day of December, 2011.

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe, MMC

APPROVED AS TO FORM:

City Attorney