

MEA Group Grievance under MOU Article 5

MEA submits this grievance on behalf of all similarly-situated MEA-represented employees (“Grievants”). Each Grievant is a permanent full-time, three-quarter-time or half-time City employee who is ready, willing and available to perform his or her customary job duties.

Factual Basis for Grievance:

On or about various dates during the period April 1 through April 3, 2020, acting by and through its authorized representatives, the City has informed Grievants that, effective April 4, 2020, they must use their own accrued leave, which is their sole and exclusive property, if they wish to remain in a paid status and that, otherwise, the City is unilaterally placing them on an unpaid furlough.

Nature and Scope of City’s Violations:

The City’s unilateral directive to Grievants violates the City’s legal obligations as follows:

- (1) As a matter of fundamental due process, the City may *not* unilaterally deprive any full-time, three-quarter-time or half-time employee, including all Grievants, of their property right to continued paid employment unless they are given advance notice and a meaningful opportunity to be heard, i.e., their *Skelly* rights.
- (2) As a matter of fundamental contract law, the City may *not* unilaterally alter the bargained-for terms and conditions of employment which are in effect and applicable to all Grievants as defined by MEA’s MOU and by Charter Section 129 (“Removals, Suspension and Layoffs”), Civil Service Rule V, “Layoff and Reemployment,” Personnel Manual Index Code L-5A. “Layoff, Other Than Police or Fire Units,” and Personnel Manual Index Code L-6, “Unemployment Compensation Procedures.”
- (3) As a matter of fundamental and controlling State law, i.e., the Meyers-Milias-Brown Act (“MMBA”), the City may *not* lawfully use a “furlough” mechanism as a means to reduce its payroll expense in lieu of a layoff, *unless* and *until* the City *first* bargains in good faith with MEA as Grievants’ recognized employee organization to determine if a satisfactory set of furlough terms and conditions can be achieved.
- (4) Nothing in the recent federal legislation or in the State’s directives related to the COVID-19 pandemic excuses the City’s failure to comply with its pre-existing legal obligations to Grievants or otherwise supercedes those obligations.

Remedies:

- (1) No Grievant shall have his or her pay reduced as a consequence of City’s unlawful directives on or about April 3, 2020, and each Grievant shall be made whole for any loss of pay or for any compelled use of accrued leave based on this unlawful directive.

- (2) The City shall take no further action to deprive any Grievant of his or her paid status as a permanent full-time, three-quarter-time or half-time City employee unless and until the City has complied with its contractual obligations *and also completed in good faith* its meet and confer obligations under the MMBA. In this regard, the City's obligations include *but are not limited* to the following:
- (a) Defining the City's goals and objectives regarding the need for any reductions in force due to a lack of work or funds for the current approved budgeted positions;
 - (b) Discussion in good faith to what extent the use of a furlough in lieu of a layoff could serve the City's and represented employees' mutual interests, and, if so, on what terms;
 - (c) Discussion of *how* the City's lay-off procedures will be implemented and *when* if alternative options fail;
 - (d) Identify all opportunities and needs within the City which could be performed/fulfilled competently and safely by employees within their own Division or Department or in another Department in lieu of furlough or lay-off;
 - (e) Identify all opportunities and needs within the Community or as part of a mutual aid arrangement with the County, other Cities within the County, or with the State which could be performed/fulfilled competently and safely by employees as Disaster Service Workers in lieu of furlough or lay-off;
 - (f) Identify the procedure by which such opportunities within or outside the City will be offered to employees in lieu of furlough or lay-off on a fair basis and without favoritism.