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LETTER TO COMMISSION
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To: Mayor Matti Herrera Bower and Members of the City Commission

From: Jorge M. Gonzalez, City Manager 

Date: May 12, 2010

Subject: STATUS UPDATE REGARDING RECENT LABOR RELATIONS ITEMS

The purpose of this Letter to Commission (LTC) is to provide information regarding the status of recent legal proceedings initiated by some of the City's Unions. These include recent: (1) arbitrations; (2) unfair labor practices; and (3) unit clarification petitions.

I. Grievance and Arbitration Process

Under Chapter 447, Florida Statutes, public employers and bargaining agents (Unions) are required to negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or groups of employees, involving the interpretation or application of a collective bargaining agreement. The grievance procedure mutually agreed to by both parties must have, as its terminal step, a final and binding disposition by an impartial neutral arbitrator, mutually selected by the parties. Although the specific grievance procedures vary amongst the City's five (5) Collective Bargaining Units, the framework of the process is consistent throughout. The grievance process is comprised of three (3) steps, with the first two (2) steps being handled at the department level. The City Manager's designee for Labor Relations hears all Step Three Grievances. If the Grievant is dissatisfied with the Step Three Grievance response, they may elect to move to arbitration.

If an arbitration takes place, all proceedings conducted by an arbitrator are in conformity with the contractual obligations of the parties. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision must be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. Both parties are required to equally share all costs associated with the arbitration. The arbitrator's decision is final and binding.

Most recently, the City has been involved in four (4) arbitrations dealing with City employees who were terminated. To date, the City has prevailed in three (3) of these arbitrations. Two of these were for CWA employees who had been terminated and one was for a GSA employee who had also been terminated. Since the City prevailed, the terminations were upheld and those employees did not return to work for the City. The City is still awaiting the arbitrator's final ruling on the fourth arbitration case regarding an AFSCME employee who was terminated.

In addition to the four arbitrations referenced above, there are currently a number of other arbitrations that have been requested by the Unions but are not actively being pursued by the Unions or are otherwise pending for various reasons. Some of these date back as early as 2002 and include the following breakdown:

Union	# of outstanding arbitrations
AFSCME	10
CWA	39
FOP	3
GSA	1
IAFF	1

II. Unfair Labor Practices

An Unfair Labor Practice (ULP) is any act committed by a union or an employer that restrains or otherwise interferes with workers' union rights under the National Labor Relations Act. A few examples of ULPs include: encouraging or discouraging union membership; refusing to bargain collectively or failing to bargain collectively in good faith; and interfering with, restraining or coercing public employees in the exercise of any protected rights. A formal allegation of a party engaging in an unfair labor practice is initiated by the petitioner filing a charge with the Public Employees Relations Commission (PERC), who then reviews the charge to determine its sufficiency.

By way of background, PERC was created by the Florida Legislature to assist in resolving disputes between public employees and public employers. PERC serves as an independent, neutral agency that is appointed by the Governor and holds hearings pertaining to collective bargaining issues and resolves disputes regarding alleged Unfair Labor Practices (ULP). In addition, PERC is also tasked with registering labor unions, issuing decisions regarding unit clarification petitions and oversees federally provided mediators and privately employed arbitrators who resolve impasses in labor negotiations.

If, upon review, the charge is determined to be sufficient, PERC notifies each party. Each party is then provided with the opportunity to file a response. PERC may issue prehearing orders that require the parties to provide written statements of relevant issues of fact and law, and such other information as PERC may require expediting the resolution of the case.

Whenever the proceeding involves a disputed issue of material fact, an evidentiary hearing is conducted with a hearing officer appointed by PERC. The hearing officer is essentially a judge who hears the facts of the case and then issues their Recommended Order to PERC for review. PERC makes the final binding determination and issues a Final Order accepting or rejecting the hearing officer's recommendation. Should PERC determine that the alleged ULP has been committed, they will issue and serve an order requiring the appropriate party or parties to cease and desist from the unfair labor practice and take positive action.

The following is the most recent ULP which was filed and heard at a PERC evidentiary hearing:

Fraternal Order of Police Allegation of ULP

On December 3, 2009, the Fraternal Order of Police (FOP) filed an Unfair Labor Practice charge against the City (Case Number CA-2009-102), alleging that the City violated Fla. Stat. §§ 447.501(1)(a) and (c), because the City unilaterally changed working conditions when it forced Field Training Officers (FTO) to work in the Field Training Officer

Program. The FOP argued that participation in the FTO program is a term and condition of employment because they believe that such participation is voluntary.

The City argued that the duties performed by FTOs and Field Training Sergeants (FTS) are within the scope of their basic employment function; thus providing the City with the statutory right to require the FTOs and FTSs to perform their duties without bargaining. Furthermore, the City argued that we have a management right to assign duties as needed.

The FTO provision in the 2006-2009 contract, which required that the City pay approximately \$115 per pay period to each FTO, "sunsetting" on September 30, 2009. Per the terms of the sunset provision and the last FOP contract, the FTO pay then reverted to a pay of an additional \$1.00 per hour for each hour(s) an FTO is assigned to train (instead of the \$115 per pay period).

The goal of the FTO program is to ensure that Probationary Police Officers are sufficiently trained in order to become patrol ready solo police officers, who are capable of handling all types of calls for service.

On February 23, 2010, an evidentiary hearing was held where the City and FOP each presented their respective positions. On April 7, 2010, the Hearing Officer issued his recommended order dismissing the charge, stating that the FOP failed to demonstrate by a preponderance of the evidence that there had been a violation of Section 447.501(1)(a) and (c). The hearing officer found that assigning tasks that are within the scope of basic employment duties that the employees were hired to perform is a management right and a matter of law.

On May 5, 2010, the City received PERC's final order adopting the Hearing Officer's Recommended Order and dismissed the FOP's ULP.

III. Unit Clarification Petitions

The unit clarification proceeding is used to determine which employees are included in a Collective Bargaining Unit recognized by PERC. PERC considers petitions for unit clarifications to determine whether or not certain job classifications share a "community of interest" with other members of a unit and should appropriately be included within a bargaining unit. Petitions for Unit Clarification may be filed by the employer, the bargaining unit, or jointly. PERC will clarify a unit by determining whether a particular job classification is in the unit when the job classification was created or changed after certification, if it was included in or omitted from the bargaining unit by mistake, or when the employer and the employee organization agree that clarification is necessary. The following is the most recent unit clarification that has been filed and that a PERC evidentiary hearing has taken place:

International Association of Fire Fighters Petition for Unit Clarification

On November 18, 2009, the International Association of Fire Fighters, Local 1510 (IAFF) filed a petition for unit clarification to PERC requesting to include the following classifications in the IAFF, Local 1510 bargaining unit: (1) Fire Division Chief, (2) Battalion Chief, (3) Fire Protection Analyst and (4) Fire Inspector. During the evidentiary hearing, held on March 5, 2010, the Union withdrew the Fire Division Chief classification from its petition.

At the evidentiary hearing, all parties were afforded the opportunity to appear and present evidence, cross-examine witnesses, and participate fully in the hearing. The Union contended that it properly invoked the unit clarification petition because the Battalion Chief classification is a newly created classification and the incumbents exercise no more supervisory authority than that exercised by Captains and Lieutenants which are already included in the existing bargaining unit. The Union also contended that the Fire Protection Analysts and civilian Fire Inspectors classifications were created after the existing unit was defined and should be included in the existing unit because they share a community of interest with current unit members.

The City argued that the Battalion Chiefs are not appropriately included in the existing unit because they are already excluded from the unit description under the wording "other chief classifications established by the City" and because they possess a supervisory conflict of interest with bargaining unit members. The City further argued that the Fire Protection Analysts and the Fire Inspectors should not be included in the existing unit because they do not share a community of interest with the IAFF unit members.

The Hearing Officer's Recommended Order was issued on March 30, 2010 and recommended to dismiss the IAFF's Unit Clarification Petition. The Union did not file exemptions to the Hearing Officer's Recommended Order and therefore, PERC adopted its Final Order on April 19, 2010 as per the Hearing Officer's recommendation to dismiss the IAFF's unit clarifications.

Subsequently, the City received a Certification Petition from PERC on April 27, 2010 notifying the City that the IAFF, Local 1510 has petitioned for the classification of Fire Battalion Chief to be included in a supervisory fire personnel unit (union). There are currently three (3) Battalion Chiefs. If approved by PERC, this would create a supervisory union for the Battalion Chiefs that is separate from the IAFF, Local 1510, creating a sixth union in the City.

As you know, the City's Labor Relations team continues collective bargaining with all the Unions for successor collective bargaining agreements and will continue to keep the Mayor and City Commission posted on our ongoing negotiations.

If you have any questions or need any additional information regarding the information presented in this LTC, please feel free to contact me or Ramiro Inguanzo, Human Resources Director.