



MIAMIBEACH

OFFICE OF THE CITY MANAGER

NO. 292-2005

LETTER TO COMMISSION

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: November 30, 2005

SUBJECT: Update on McKinnon et al. lawsuit

The purpose of this LTC is to update you on the outcome of the State Circuit Court's ruling in favor of the City of Miami Beach in the McKinnon lawsuit. The City was granted summary judgment.

This lawsuit was filed in 2001 by a group of classified employees, including Richard McKinnon, who is presently president of Local 3178, Communications Workers of America (CWA). The City and the Retirement System for General Employees were named as defendants. The lawsuit was based on a number of ordinances that were passed by the City Commission in 1993 and 1994. These ordinances, among other things, increased the employee contribution rate to the Retirement System from 8 percent to 10 percent. The lawsuit claimed that the City was required by its Charter and by state law to submit the ordinances to a referendum before they could become effective. The ordinances were not submitted to a referendum.

The lawsuit was certified as a class action. The Class consisted of all participants, actively employed or retired, in the Retirement System who had contributed at a rate of 10 percent since 1994. The lawsuit sought a refund of all contributions in excess of 8 percent made by employees since 1997. Very roughly, this could have amounted to about 2 percent of payroll for all classified employees since 1997.

The City filed a claim in this same lawsuit against the three general employee unions because the unions all had ratified contracts in which they had bargained and agreed to the 10 percent contribution rate. The City's claim against the unions would have come into play only in the event the Plaintiffs won the lawsuit.

The facts in this case were never in dispute. The City made a number of legal arguments against the Plaintiff Class Action theory, including: (1) that the claims were barred by the statute of limitations; (2) that, because the unions had agreed to the 10 percent rate, the covered employees could not now go back on those agreements; (3) that, because the Florida Constitution protects collective bargaining as a fundamental right, any requirement by state or local law permitting an electoral veto of collectively bargained agreements would be pre-empted by the Constitution; (4) and other arguments.

These issues were briefed by the parties and were argued before the Court on two occasions, most recently on November 22, 2005. After hearing arguments from all parties on that day, the Court ruled orally in favor of the City. Judge Gisselle Cardone Ely ruled that all members of the Class were barred by the statute of limitations. She also ruled that all members of the class whose positions were covered by bargaining units could not now challenge the 10 percent contribution rate to which they had agreed through their unions.

The parties have been directed to submit a proposed order embodying the Court's decision. When that order is rendered, the Plaintiff Class will have 30 days within which to file an appeal, should they choose to do so.

If you should any further questions, please feel free to contact me directly.

Thank you.

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