

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

IN THE MATTER OF IMPASSE

BETWEEN

CITY OF NORTH MIAMI BEACH,

PUBLIC EMPLOYER

PERC Case No.: SM-2013-006

Date of appointment: 3/26/13

Date of Hearing: 5/2/13

Briefs received: 5/30/13

Date of Report: 7/5/13

And

LOCAL 6005, INTERNATIONAL UNION
OF POLICE ASSOCIATIONS, AFL-CIO,

UNION

**REPORT AND RECOMMENDATIONS OF STANLEY H. SERGENT,
SPECIAL MAGISTRATE, ISSUED PURSUANT TO FLORIDA
STATUTES, CHAPTER 447, AS AMENDED**

APPEARANCES

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CITY OF NORTH MIAMI BEACH,
PUBLIC EMPLOYER,

PERC Case No.: SM-2013-006

And

LOCAL 6005, INTERNATIONAL UNION
OF POLICE ASSOCIATIONS, AFL-CIO,
UNION

I. INTRODUCTION AND PROCEDURAL HISTORY

The City of North Miami Beach (City or Employer) and Local 6005 of the International Union Police Associations, AFL-CIO (Union) have had a bargaining relationship for many years. The Union is the exclusive bargaining agent for members of a bargaining unit composed of all Police Officers and Police Communications Officers employed by the City. The most recent collective bargaining agreement between the parties covered the period from October 1, 2009 to September 30, 2011.

Following the expiration of the most recent agreement on September 30, 2011, bargaining for a new agreement began in the summer of 2012. After approximately eleven sessions of bargaining impasse was declared by the City on February 6, 2013.

The Special Magistrate has been called upon to conduct a hearing and make recommendations concerning several issues over which the

parties are at impasse. They pertain to provisions contained in six articles of the collective bargaining agreement. They are as follows:

1. Article 21 – Group Insurance;
2. Article 22 – Leave;
3. Article 30 – Retirement (for police officers) and
4. Article 31 – Retirement Benefits for Police Communication Officers
5. Article 36 – Wage and Salary Provisions;
6. Article 38 – Term of Agreement

Each of the parties' proposals and counter-proposals will be briefly summarized as follows:

1.) In regard to the group insurance provisions the City proposes an amendment under the terms of which the City's contribution for coverage would be reduced. The proposal reads as follows:

- (a) The City agrees to pay seventy-five percent (75%) of individual HMO single coverage on behalf of the employee,
- (b) If the employee does not elect the individual coverage referenced in paragraph (a), but instead elects HMO Couple, or HMO Family, the City will pay sixty percent (60%) of the cost of said coverage.
- (c) An employee may elect POS or PPO coverage, either as an individual, couple or family, and will pay the excess cost over the City's payment as set forth in (a) and (b).

Under the City's proposals, bargaining unit members are expected to incur the following increases in their weekly cost:

Individual coverage – HMO (\$25.12); POS (\$35.90); and PPO (\$36.50).

Couple coverage – HMO (\$65.22); POS (\$76.87); and PPO (\$77.53).

Family coverage – HMO (\$58.82); POS (\$73.90); and PPO (\$74.75).

The Union proposes the following with respect to changes in the health insurance plan:

First, that the City pay, eighty percent (80%) of the premium for individual coverage under an HMO and an additional fifty percent (50%) of any additional premium for couple or family coverage.

Second, for HMO coverage that members pay \$20.00 weekly for individual coverage, \$60.00 weekly for couple coverage and \$103.75 weekly for family coverage;

Third, for coverage through a Point of Service ("POS") insurance plan the Union proposes that members pay \$20.00 weekly for individual coverage, \$71.75 weekly for couple coverage and \$78.91 for family coverage.

Finally, for coverage through a Preferred Provider Organization (PPO) insurance plan, the Union proposes that members pay \$20.00 weekly for individual coverage, \$72.40 weekly for couple coverage and \$79.75 for family coverage.

2.) As to the issue of leave, the City has submitted a proposal regarding Section 2 to eliminate what it considers to be a very generous tiered longevity system in the interest of making the benefit more inclusive and cost effective. Under the City's proposal, when employees reach ten (10) years of continuous service with the City, they shall receive an additional twenty four (24) hours of annual leave.

In Section 6, the City has also proposed reducing the annual sick leave accrual rate by half, from ninety six (96) hours to forty eight (48) hours per year. In Section 7, the City has proposed that employees may accrue unlimited sick leave hours, but that they will be capped at six hundred (600) hours for payout purposes upon separation. The City has also proposed reducing percentages of the banked sick leave eligible for payout based upon years of service as follows:

- For employees with 2 ½ years of service to 10 years of service the City proposed reducing payout percentage from 25% to 15%. The Union is in agreement with that reduction;
- For employees with 10 years to 15 years of service the City proposed reducing the payout percentage from 50% to 25%;

- For employees with 15 years to 20 years of service the City proposed reducing the payout percentage from 75% to 40%; and
- For employees with over 20 years of service the City proposed reducing the payout percentage from 100% to 50%.

For example, under the City's proposal an employee with over twenty (20) years of service and six hundred (600) hours of banked sick leave hours would be eligible to cash in three hundred (300) of those hours of sick leave upon separation at the employee's then-current rate of pay. The City's proposal also provides an opportunity for employees to accrue sick leave for use in the event of a legitimate illness or injury, and a generous opportunity to bank sick hours for cash payment upon separation. The remainder of the changes proposed in the City's article consists of either clean up or clarification of existing rights.

The Union proposes that the annual longevity leave for members of the bargaining unit be tied to the schedule set forth in the City's Civil Service Rules for all City employees.

The City also proposes that a revised conversion schedule be implemented which reduces the percentages at which employees can cash out their accumulated sick leave. The Union proposes that employees' accumulation and ability to convert (cash out) their sick leave accruals be

tied to the schedule set forth in the City's Civil Service Rules for all City employees.

3.) As to the issues pertaining to retirements the City has submitted the same proposal that was proposed in May during negotiations with AFSCME. It involves significant reductions in the benefits provided under the pension plans.

In regard to police officers the City has proposed reducing their multiplier from 3% to 2%; going from a normal retirement age 52 or 20 years of service to age 62 with 10 years of credited service or age 55 with 25 years of service; limiting pensionable earnings to total cash remuneration, excluding overtime; going from 2.5% COLA to an "ad-hoc" COLA; eliminating the purchase of service time; and eliminating the eight (8) year DROP program.

In regard to communications officers, much like the management pension plan that is already in effect, the City has proposed reducing the general employees' multiplier from 3% to 2%; going from a normal retirement age 62 or age 55 with 20 years of credited service, to an age 66 with 6 years of credited service or age 59 with 30 years of credited service; going from 2.25% COLA to an "ad-hoc" COLA; eliminating the purchase of service time; and eliminating the five (5) year DROP program.

The Union contends that no change to Article 30 – Retirement Benefits is appropriate under the circumstances. It also opposes the City's efforts to insert a newly labeled Article 31 into the Agreement.

4.) As to the matter of wages, the City proposed that the current status quo with regard to wage and salary provisions and the existing freeze on any and all wage increases be maintained.

The Union accepts the City's proposed wage freeze for the first year of any collective bargaining agreement but proposes that in the event the term is longer than one year (October 1, 2012 through September 30, 2013) that the Local be afforded a re-opener with regard to wages at least sixty days prior to the end of the fiscal year subject to such collective bargaining agreement. The Union also proposes that all employees be brought current within the Step Raise Plan attached to the Agreement.

5.) The City proposes that the parties enter into a three (3) year agreement. The Union seeks a one (1) year agreement continuing through September 30, 2013.

Following the selection of the undersigned as Special Magistrate a hearing was conducted at City Hall in North Miami Beach on May 2, 2013. In the course of the hearing both parties were afforded ample opportunity to present testimony and documentary evidence and to cross-examine witnesses called by the opposing party. At the conclusion of the hearing

the parties agreed to submit post-hearing briefs. They were received on the date indicated above.

It should be noted that shortly after briefs were received by the Special Magistrate, the City filed a Motion to Strike based on allegations that the Union had improperly attempted to introduce new evidence that had not been offered at the hearing regarding the City's proposed amendments to the pension plans. Although the Union was afforded the opportunity to respond to the Motion, it elected not to do so. After due consideration of the documents and arguments to which the City objected, I have determined that the Motion is well founded and should therefore be granted. Accordingly, consistent with that determination the new evidence as well as the arguments that have been advanced by the Union pertaining to such evidence will not be considered herein.

II. APPLICABLE LAW

Florida Statute Section 447.405 sets forth some of the factors to be considered by the Special Magistrate in arriving at a recommended decision as follows:

The Special Magistrate shall conduct the hearings and render his recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employees. The factors, among others, to be

given weight by the special master in arriving at a recommended decision shall include:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee government bodies of comparable size within the state.
- (3) The interest and welfare of the public.
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
 - (a) Hazards of employment.
 - (b) Physical qualifications.
 - (c) Educational qualifications.
 - (d) Intellectual qualifications.
 - (e) Job training and skills.
 - (f) Retirement plans.
 - (g) Sick leave.
 - (h) Job security.
- (5) Availability of funds.

III. DISCUSSION AND RECOMMENDATIONS

1. Discussion of Issues

A. Article 21 – Group Insurance

As previously noted the City has proposed an amendment to the group insurance provision which will reduce the City's contribution to employees' coverage and create a corresponding increase in the amount

employees will be required to contribute. Under the current CBA the City pays 100% of the premium for individual employees and thereafter, through a formula, essentially 80% of dependent coverage. Based upon financial considerations, the City has proposed reducing its contribution to 75% of HMO single coverage, or 60% of the cost of HMO couple or HMO family coverage. Employees would also be able to elect POS or PPO coverage and pay the difference over the City's payment.

While the changes proposed by the City understandably represent a substantial increase in the cost to employees, the City maintains that such changes are necessary so that it can maintain the same level of coverage the employees have come to expect and enjoy from their group insurance plans. The City also notes that the same changes will be implemented for the City's non-represented employees and have been proposed for employees in the AFSCME bargaining unit. The City maintains that significant additional contributions are needed from its employees toward the increasing cost in health insurance, which is a reality most employers are facing given the local, state and national economic climate.

Although the Union is amenable to some modifications in the health insurance coverage which would reduce the amount of the premiums paid by the City and increase the amount paid by employees, the amount of the change it proposes would be considerably more modest than that proposed by the City. The Union notes that the estimated increased

weekly cost to employees under the City's proposal as reflected by CX 6, is as follows:

Individual Coverage – HMO (\$25.12); POS (\$35.90); and PPO (\$36.50)
Couple Coverage – HMO (\$65.22); POS (\$76.87); and PPO (\$77.53)
Family Coverage – HMO (\$58.82); POS (\$73.90); and PPO (\$74.75)

The Union has acknowledged that there is not a great amount of difference between its proposal and that of the City regarding the sharing of costs of health insurance. It attributes this to the fact that it has brought its proposal much closer to that which the City has proposed. It nonetheless maintains that its proposal should be adopted because it recognizes the City's need to reduce its share of health care costs while at the same time maintaining the affordability of health care for members of the bargaining unit.

B. Article 22 – Leave

The City has proposed several amendments to the leave provisions. First, it has proposed a change in Section 2 to reduce the amount of additional annual leave full time employees will receive based on length of service. Specifically, the City has proposed eliminating the tiered longevity system whereby a 20 – year employee currently receives eighty (80) hours of leave per year, in favor of a more cost effective and inclusive plan. Under this proposal, when employees reach ten (10) years

of continuous service with the City they shall receive an additional twenty-four (24) hours of annual leave.

In Section 6, the City has proposed reducing the annual sick leave accrual rate by half, from ninety-six (96) hours to forty-eight (48) hours per year. In Section 7, the City has proposed that employees may accrue unlimited sick leave hours, but that employees will be capped at six hundred (600) hours for payout purposes upon separation. The City has also proposed reducing percentages of the banked sick leave eligible for payout based upon years of service. The reduction ranges from twenty-five percent (25%) for employees with ten to fifteen years of service, to fifty percent (50%) for employees with over twenty years of service.

The City maintains that its proposals regarding Article 22 address its need to reduce liabilities and provides for the City's financial future while at the same time providing employees with adequate leave and an incentive to maintain long-term employment with the City.

In regard to the longevity leave issue, the Union proposes that such leave be governed by the schedule set forth in the Civil Service Rules for all City employees. The Union argues that if it is fair and equitable for all other City employees to accrue longevity leave pursuant to the existing Civil Service Rules, then the accrual of such leave in the same manner by members of the Local Union would likewise be fair and equitable. It

would also provide the City with a consistent method for maintaining the accrued longevity leave for all City employees, including its police officers.

The Union opposes any change to the sick leave provisions and proposes that members of the bargaining unit continue to earn sick leave at the rate of eight (8) hours per month, for a total of ninety-six (96) hours per year. According to the Union, the current sick leave benefit is entirely consistent with the benefit earned by other police officers employed in some adjoining counties and in neighboring municipal agencies.

As to the City's proposal concerning sick leave accumulation and conversion, the Union proposes that its' members ability to accumulate and convert (cash out) their sick leave accruals be tied to the schedule set out in the City's Civil Service Rules.

The Union contends that adoption of the City's proposal would be inequitable in that it would deprive numerous officers of time they have accrued under existing rules affording them a right to convert all of their currently accrued accumulated hours of sick leave, and would provide a financial windfall to the City at these officers' expense.

**C. Article 30 – Retirement Benefits (Sworn Police Officers)
and Article 31- Retirement Benefits (Police
Communication Officers)**

The City has proposed substantive changes in the retirement benefits for both groups of employees covered by the CBA. In regard to Article 30, which pertains to Police Officers, the City has proposed reducing their multiplier from 3% to 2%; going from a normal retirement age of 52 for 20 years of service to age 62 with 10 years of credited service or age 55 with 25 years of service; limiting pensionable earnings to total cash remuneration, excluding overtime; going from 2.5% COLA to an “ad-hoc” COLA; eliminating the purchase of service time; and eliminating the eight (8) year DROP program.

In regard to Article 31, which pertains to Police Communication Officers, much like the management pension plan that is already in effect, the City has proposed reducing their multiplier from 3% to 2%; going from a normal retirement age 62 or age 55 with 20 years of credited service, to an age 66 with 6 years of credited service or age 59 with 30 years of credited service; going from 2.25% COLA to an “ad-hoc” COLA; eliminating the purchase of service time; and eliminating the five (5) year DROP program.

While acknowledging the adverse effects that the proposed changes will have on the employees in the unit, the City nonetheless maintains that they are necessary given the City’s financial difficulties and

to ensure that the City is able to budget for a sustainable future for all of the City's employees and its residents. The City noted that consistent with that objective, before coming to the Union with this proposal it had already undertaken to implement substantially similar changes to the management employees' pension plan.

The Union contends that no change to Article 30 is appropriate under the circumstances and given the parties' positions during negotiations. The Union further contends that the proposed pension amendment represented by the modification of Article 30 which was presented to the Union for the first time at the Special Master proceeding cannot lawfully be imposed by the City without first procuring the approval of any such amendments or modifications by at least sixty percent (60%) of the active members.

In regard to the changes proposed by the City pertaining to retirement benefits for Communication Officers, the Union offers the same reasoning and arguments that it applied to the City's proposal concerning retirement benefits for police officers. The Union also notes that the specific retirement plan for communication employees is administered by and on behalf of the City's general employees who are represented by AFSCME Local 79 and that the plan for such employees contains a provision authorizing plan participants to conduct a vote to approve or reject any proposed plan amendments by sixty-six percent (66%) of the

participants. Accordingly, the Union maintains that if it were to acquiesce to the City's proposed amendment to the retirement plan, it would thereby violate the contractual and constitutional rights of its membership to vote upon any proposed amendments to the plan.

D. Article 36 – Wage and Salary Provisions

As previously noted, the City proposes that the status quo be maintained with regard to wage and salary provisions and, in particular, that the existing freeze on any and all wage increases for bargaining unit members be continued. The City contends that such a freeze will further its need to address a number of financial issues, such as funding much needed capital improvements and maintaining the flexibility to be able to staff its Police Department as public safety needs demand.

The Union is willing to accept the City's proposed wage freeze for the first year of any CBA, but argues that it would be inequitable to extend that period without affording it the opportunity to negotiate a wage increase for the second and/or third year of the new Agreement. Additionally, as a matter of fairness and equity, the Union proposes that the two Sergeants and five police officers who have been frozen in pay since 2009, and two newly promoted Sergeants who will not earn a step increase under the current freeze be brought current within the step raise plan.

E. Article 39 – Terms of Agreement

The fact that there was an issue at impasse regarding the term of the Agreement was not made known to the Special Master prior to the hearing when a list of such issues was submitted and it was not raised in the course of the hearing. Rather, it was presented for the first time in the Union's post-hearing brief and was not addressed in the City's brief. Accordingly, in the absence of reasonable notice to the City that the term of the Agreement was one of the issues to be considered at impasse, it is found not to be a proper matter for the Special Master's consideration.

2. Recommendations

As the Florida Statutes make clear, in reaching a decision on the issues at impasse, a Special Magistrate must give due consideration to all of the applicable factors listed in 447.405 Florida Statutes, including the elements of justice, equity and the interest and welfare of the general public, all of which encompasses a highly judgmental balancing process. A diligent effort has been made to analyze the issues at impasse on the basis of these standards.

The essence of the arguments advanced by the parties in support of their respective positions regarding the issues at impasse has been summarized in considerable detail above. After due consideration of these arguments in light of the evidence and the relevant statutory factors, I find that while the Union has made a number of valid points, the

arguments advanced by the City are the more compelling. Consequently, based upon several considerations I have concluded that with few exceptions the City's proposals as a whole should be adopted.

First of all, in regard to group insurance, the evidence shows that for many years the City has managed to provide members of the bargaining unit a very generous health insurance plan at a minimal cost to employees. Unfortunately, the evidence also shows that the cost of such benefits have been rapidly escalating. Indeed, the Union acknowledged that health insurance premiums are going up and that members of the bargaining unit are at "the lower end of the spectrum" in required contributions to health care costs. The evidence also shows that revenues are declining as a result of the deepening recession and that this has had a profound adverse effect on the City's financial well-being. As a result, the increased employee contributions proposed by the City are entirely justified in order for the City to maintain the level of coverage that employees have come to enjoy and expect from their group insurance plans.

It is important to note that the City is not asking members of the bargaining unit to make any sacrifice that is greater than that of others that are City employees. Rather, the same increases will be implemented for the City employees not represented by a bargaining unit and the City has proposed the same increases in contributions from employees in the

AFSCME bargaining unit. Under its proposal the savings to the City for the IUPA bargaining unit is projected at approximately \$236,000 and the total savings to the City for all employees combined is approximately \$806,000.

In the interest of maintaining the same level of coverage under the group insurance plan, despite the proposed increases in the costs of such coverage by the insurance provider, and because the City is undeniably experiencing a period of financial hardship, I will recommend that its proposal be adopted.

Second, in regard to the issues at impasse pertaining to leave, the same reasoning which was applied in supporting the City's proposals regarding group insurance apply with equal force to its proposals regarding leave. Based on the indisputable fact that the City is facing virtually unprecedented economic difficulties, it is entirely justified in asking employees to share some of the economic burden in the interest of enabling the City to protect their jobs and to continue to provide the necessary services to its residents. While the Union's proposals, which to some extent sought to expand current benefits might have some appeal if the economic circumstances were favorable, they fail to recognize and address the City's need to reduce costs and unfunded liabilities while at the same time maintaining reasonable benefit levels for employees. Accordingly, I recommend that the City's leave proposal be adopted.

Third, the changes in the pension plan that have been proposed by the City have been summarized in considerable detail above. While there is no doubt that such changes represent a substantial reduction in benefits the bargaining unit members have heretofore enjoyed, the real question is whether such changes are warranted in light of the City's current financial difficulties and are consistent with the City's interest in ensuring that it is able to budget for a sustainable future for all of its employees and its residents. A careful review of the evidence reveals that this question must be answered in the affirmative.

The evidence presented by the City graphically displays the extent of the adverse economic impact its pension obligation for the police and general employee pension plans is having on its financial well-being. Indeed, the allegations set out on the City's brief in that regard are fully supported by the evidence.

To begin with, it shows that the recession has been particularly damaging to the economies of Florida's various governmental agencies that derive their funding primarily from a diminishing ad valorem and sales tax base. In particular, the evidence shows that in North Miami Beach property values and the operating tax levy have declined significantly since fiscal year 2009. Since that year the City's property values have fallen from approximately \$2,648,000,000 to \$1,740,000,000 in fiscal year 2012. Commensurate with that decline the City's Operating

Tax Levy has fallen from \$17.5 million in fiscal year 2009 to \$11.5 million in fiscal year 2012. For fiscal year 2013 the Property Value and Operating Tax Levy are projected to decline even further down to \$1,734,000,000 and \$11,451,000 respectively.

The City's Comprehensive Annual Financial Report (CAFR) for the year ending September 30, 2012, provides explicit detail as to the depth of the problem the City is facing with regard to its pension obligations with police and general employee pension funds. In that regard the evidence shows that the Unfunded Actuarial Accrued Liability (UAAL) to the City for the police pension plan is nearly \$50 million or 844% of covered payroll. The UAAL to the City for the General Employees' Pension Plan of which the Communication Officers are participants, is \$36 million or 340% of covered payroll. The dollar amount of the City's contribution requirement for 2013-14 is approximately \$5.9 million or 99.5 % of payroll and the total required contribution (including City and State contributions) is approximately \$6.8 million or 116% of payroll. These required payments have been aptly characterized by the City as "staggering" for a City this size and only continue to increase year after year.

Based on the foregoing I find that the changes to the pension plans proposed by the City are reasonable and necessary as they will help reduce the ever growing pension payments and create a path toward a more sustainable yet still generous retirement benefit for City employees.

Accordingly, I recommend in favor of the City's proposal regarding the changes in the pension plans.

Finally, as to the issues involving the wage and salary provisions, there is little need for a recommendation in light of the fact that the Union has expressed a willingness to acquiesce to the City's proposal to maintain the status quo. Based on this concession, however, it would be only fair and reasonable to allow the wage reopener proposed by the Union for the second or third year of the new Agreement. Accordingly, I recommend that the proposal be adopted. In the same interest of fairness and equity, I also recommend adoption of the Union's proposal to bring the salary levels of the nine Officers whose pay has been frozen to the current levels under the Step Raise Plan.

Respectfully submitted this 5th day of July, 2013.


Stanley H. Sergent, Special Magistrate

STANLEY H. SERGENT
ATTORNEY • ARBITRATOR

Sarasota, Florida