

**IMPASSE HEARING**  
**September 20, 2010**

A Public Impasse Hearing between the Police Benevolent Association and the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 5:00 p.m., on Monday, September 20, 2010.

Roll call showed:

Present -                   Commissioner Gary P. Eliopoulos (arrived at 5:54 p.m.)  
                                  Commissioner Fred B. Fetzer  
                                  Commissioner Adam Frankel  
                                  Commissioner Angeleta Gray  
                                  Mayor Nelson S. McDuffie

Also present were -     David T. Harden, City Manager  
                                  Brian Shutt, City Attorney  
                                  Chevelle D. Nubin, City Clerk

Mayor McDuffie called the meeting to order and announced that it had been called for the purpose of considering the following item:

1. City Commission Hearing for Resolution of Impasse between the City and Police Benevolent Association (PBA)

Leonard A. Carson, Attorney, Carson & Adkins, Special Labor Counsel to the City of Delray Beach, stated the process the parties have been going through so far is that they have been negotiating at the bargaining table and reached impasse over wages. Both parties presented their cases to a Special Magistrate who was selected from a panel submitted to us by Public Employees Relations Commission (PERC). The special magistrate issued a recommended decision which was rejected by the city. He discussed Delray's Mini-Perc who is obligated to follow the rules and regulations of the state. He stated it is important to give all parties ample opportunity to present their case. He stated the final decision Commission makes tonight will be the resolution of the case. He called attention to the laws stating the City Manager is required to present his reasons for why he rejects the magistrate's recommendation. He summarized these: reduced tax revenue and increased expenses: foremost among this is pension costs. Mr. Carson stated one of the items that the magistrate called into attention was the cost of the midnight step increase. He continued to discuss this item as well as the doctrine of status quo, wage freezes, the pay increases given to Lieutenants and Captains, compression and the special magistrate's recommendations. During this time, he referenced pages 3, 8, 9, 10 and 13.

Mr. Frankel asked what is the cost going forward and does this take into consideration officers possibly going from 84 to 80 hours. He stated that it seems the standard position is that there is an unbiased neutral magistrate that made a decision. He asked Mr. Carson if he is saying the magistrate is wrong.

Mr. Carson discussed Mr. Young's qualifications and stated he feels Mr. Young misunderstood the tables and misapprehended the issue of why a municipality would find it necessary to elevate lieutenants and captains to avoid compression and going back to 2008, why it was necessary to do this before increases were frozen.

Mr. Frankel asked why Mr. Carson did not make Mr. Young understand the chart during his presentation.

Mrs. Gray asked if the amount of \$568,000 includes a 5% increase; and would this be for each year.

Mayor McDuffie asked Mr. Carson to describe Mini-Perc.

Mr. Carson discussed the Mini-Perc, Collective Bargaining Law – Chapter 447, Florida Statute and jurisdiction.

Mr. Fetzer stated he will reserve his comments/questions until both parties have presented.

Mayor McDuffie inquired about the \$2,000 increase at the end of the year.

Mr. Gary Lippman, Counsel for the Police Benevolent Association, stated we have a decision by a Special Master who reviewed the arguments of the parties and the figures that were submitted and came to the conclusion that what the officers offered were reasonable under the circumstances. He discussed Mr. Carson's reference to this midnight step increase and commented about the language. He stated the officers demanded a wage freeze and the wages have been frozen since October 1, 2009 and will probably be frozen until September 30, 2010. He mentioned status quo and stated the bottom line is that none of the officers have received an increase to their wages. He stated the pay plan agreed to was if you performed satisfactorily you may earn an increase without exception by September 30<sup>th</sup>. He stated 365 anniversary dates have come and gone and the police officers and sergeants were the only city employees who will have been frozen for the entire year. He stated the city rejected that offer. Mr. Lippman discussed a challenge as mentioned by Mr. Carson. He stated he hopes Commission has read what was presented to them. He stated the special master had questions about the numbers. He also discussed Mr. Young and stated Mr. Young was off guard that what was at impasse was the officers offer to be frozen for the year. He stated the special master concluded that the cost had not been established but that the cost is not \$568,000. He referenced an impasse hearing for West Palm Beach. He discussed Ms. Turner and stated Mr. Joe Safford, Finance Director, testified on behalf of the city, stated the figure was based on three benefits: 5% step on 9/30/2010, to add 2% across the board to every step and another 5% step. Mr. Lippman discussed the special master's recommendations. He stated the Commission's objective is to determine what is fair and in the best interest of the public as well as employees. He discussed the city manager's resolution, employee morale, Exhibits 2, 3 and 4 and the second page of the Foster and Foster report. He discussed a worksheet presented by officers and poster board exhibits with crime statistics.

Mr. Fetzter asked if this is approved tonight do we have a contract.

Mrs. Gray asked if Mr. Lippman stated a retiree will get paid more in retirement that he did when he worked here.

Mr. Frankel thanked Mr. Lippman and asked him to discuss the special magistrate's background.

Mr. Eliopoulos asked how Mr. Lippman felt about the agreement with the lieutenants.

Both Attorneys gave rebuttal.

Mr. Frankel stated he is confused about Mr. Carson's interpretation of the special magistrate's review of the chart. He stated it is incredible that Mr. Carson was not at the hearing.

Mr. Eliopoulos asked why Mr. Carson was not at the hearing.

Mrs. Gray stated general employees have not received an increase in two (2) years and asked why we have not come to an agreement in the last year. She stated she is uncomfortable allocating funds that we may not have. Mrs. Gray asked how this will affect us in the future.

The city manager discussed the millage rate, budget and the \$568,000.

Mayor McDuffie asked someone to address the assertions on this list regarding retirees.

The city manager stated people have been retiring throughout the year and the list has not been constantly updated.

Mr. Lippman commented regarding the list, special magistrate, pensions and VEBA.

Mr. Carson stated the statutes spell out the roles of officials.

Mr. Fetzter stated he is not clear on the procedure used to settle on who is the special magistrate.

Mr. Frankel stated he has been thinking about this for the last week. He stated everyone always says how great our Police Department is. He discussed the special magistrate's decision and stated he needs information to want to reverse his decision. Mr. Frankel inquired as to how to state the motion.

Mr. Brian Shutt, City Attorney, provided direction to the Commission regarding the format for making motions.

Mr. Frankel stated there was no evidence presented that the special magistrate was incorrect. He stated he votes with the special magistrate's decision.

Mr. Fetzer stated he respects our Police Department and Delray Beach is not unique in going through the financial times we are going through right now. This is all over the state and country. He believes we were adequately represented at the hearing. He discussed the special magistrate's reports and stated he saw several inconsistencies and errors. Mr. Fetzer stated the Commission's role is to make a final decision on this. He mentioned the \$568,000 and stated he does not understand why we cannot agree on the numbers. He stated he supports the city manager's position on this.

Mrs. Gray stated she will have to go with the city manager's recommendation. She stated she does not believe we should fund something now that we do not know how it will affect us future. She stated general employees have been without a raise as well.

Mr. Eliopoulos stated you do what you have to do to survive in this environment and economy. He stated he remembers the 80's and 90's and Delray has changed. He stated we are all in this together, discussed the budget and stated he feels general employees will take the hit. He stated we have tried to do the right thing by not laying off anybody and making pay cuts. He stated he is voting what is right for the community as a whole. Mr. Eliopoulos stated he will be going tonight with the city manager's recommendation.

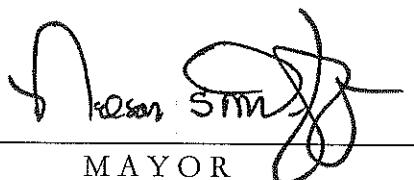
Mayor McDuffie echoed Mr. Fetzer's and Mr. Eliopoulos' comments at this time. He mentioned the real estate market in 2006 and Amendment No. 1. He discussed the budget and stated jobs for employees are incredibly important. He stated Commission believes we have the finest Police Department in Florida; and this is not intended to be punitive in nature but to maintain employment throughout the community. He stated Commission has a fiduciary responsibility to this community to keep this city economically healthy and everyone employed to the greatest extent. He accepts the city manager's recommendation.

Mr. Fetzer moved that Article 10, Wages, be resolved by adopting the city proposal for wage freeze, that there not be any across the board wage increases for employees in the bargaining unit, and that there will not be any step movement for employees in the bargaining unit, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Fetzer - Yes; Mr. Frankel - No; Mrs. Gray - Yes; Mayor McDuffie - Yes; Mr. Eliopoulos - Yes. Said motion passed with a 4 to 1 vote; Mr. Frankel dissenting.

Mayor McDuffie adjourned the Impasse Hearing at 6:50 p.m.

  
City Clerk

ATTEST:

  
MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Impasse Hearing of the City Commission held on Monday, September 20, 2010 which Minutes were formally approved and adopted by the City Commission on October 5, 2010.

  
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City Clerk

**NOTE TO READER:** If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval, which may involve amendments, additions or deletions to the Minutes as set forth above.