

**STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION**

**IN THE MATTER OF IMPASSE BETWEEN**

**CITY OF HIALEAH**

**AND**

**CASE # SM-2010-49**

**HIALEAH ASSOCIATION OF FIRE FIGHTERS,  
IAFF, LOCAL 1102**

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**REPORT AND RECOMMENDATIONS OF SPECIAL MAGISTRATE  
Thomas W. Young, III  
October 14, 2010**

**Appearances:**

**For the City of Hialeah**

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## PRELIMINARY MATTERS

Pursuant to Section 447.403, Florida Statutes, and Florida Administrative Code Rule 60CC-3.004, the undersigned was appointed Special Magistrate in the above captioned proceedings by letter dated June 28, 2010, from Stephanie Williams Ray, Chair of the Florida Public Employees Relations Commission. The parties were advised of the appointment by letter from the undersigned dated June 30, 2010.

On July 22, 2010, an order was issued by the undersigned confirming the parties' agreement to schedule the evidentiary hearing in this matter for September 21, 2010.

The hearing commenced on September 21, 2010, at 9:00 AM, and concluded at 3:30 PM. The hearing was held at Town Hall Council Chambers – Third Floor, 501 Palm Avenue, Hialeah, Florida 33010. The parties were given the opportunity to present witnesses, documents and argument. At the conclusion of the hearing, the parties agreed to file their briefs electronically with the Special Magistrate by October 7, 2010, and also agreed that the hearing would be closed at that time. The Special Magistrate indicated the Report and Recommendations would issue by the close of work on October 14, 2010.

After consideration of the 129 page transcript, the testimony, the exhibits, and the post hearing briefs, the undersigned makes the following Report and Recommendations.

*The City of Hialeah exhibits will be indicated as (City # \_\_\_). References to the briefs of the parties will be indicated as (City Br. at p. \_\_\_), or (Local 1102 Br. at p. \_\_\_) as appropriate. References to the transcript will be indicated as (T. \_\_\_). References the collective bargaining agreement will be indicated as CBA.*

## ARTICLES AT IMPASSE

By its letter to the Special Magistrate, dated July 9, 2010, The City of Hialeah (City) indicated that it was at impasse with Hialeah Association of Firefighters, IAFF Local 1102 (Local 1102) over the following issues:

- Article 1 Definitions - The definition of the term “probationary period.”
- Article 37 Health Insurance Provisions
- Article 38 Pension - Section 4, Section 12, Section 15
- Article 41 Holidays
- Article 45 Special Pay
- Article 46 Merit System
- Article 49 Reimbursement
- Article 50 Pay Plan
- Article 55 Sick Leave Accrual
- Article 56 Furlough (New Article)

During the hearing, Local 1102 indicated that agreement had been reached regarding Article 1 – Probationary Period, and that Article 49 – Tuition Reimbursement was no longer at impasse. With regard to new Article 56 – Furlough, Local 1102 indicated at hearing that the issue was not at impasse, and that if furloughs were implemented in the future, Local 1102 would address the issue at that time. The City did not disagree with Local 1102’s characterization of the issues at impasse. (T. 122, 123). Consequently, based upon the evidence of record, it is determined that the following issues remain at impasse:

- Article 37 Health Insurance Provisions
- Article 38 Pension - Section 4, Section 12, Section 15
- Article 41 Holidays
- Article 45 Special Pay
- Article 46 Merit System
- Article 50 Pay Plan
- Article 55 Sick Leave Accrual

### **FINDINGS OF FACT**

Section 447.403(3), Florida Statutes, provides in pertinent part as follows:

The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and render a decision on any and all unresolved contract issues.

Both parties were given an opportunity to present witnesses and exhibits at the hearing. The City, having declared impasse, presented its case in chief through witness testimony and exhibits.

At the conclusion of the City’s case, Local 1102 stated as follows:

And we did participate fully in the hearing in good faith and took every opportunity to examine witnesses and review the evidence submitted by the City, and the union, at this time, is satisfied quite frankly, that we can make all of the arguments that we feel is sufficient based upon the information introduced by the City. (T. 124).

Local 1102 stated further,

. . . the union does not feel the need to put on its own evidence and witnesses separate and apart from anything that he City has presented and we’ll make our arguments in the closing brief. (T. 126).

Consequently, except as noted regarding the points raised by Local 1102 on cross examination of the City’s witnesses, the evidence presented by the City through testimony and exhibits is uncontroverted. Therefore, based upon the evidence of record, the undersigned makes the following findings of fact:

## **Demographics –**

1. The City of Hialeah has a population of approximately 250,000. The residents are 94% Hispanic. It is a working class community, heavily dependent on the construction industry with many of the residents employed as masons, electricians and plumbers. Most of the businesses are small and family owned by city residents. The city is heavily commercial as opposed to residential. (T. 25, 26).
2. The City is experiencing an unemployment rate of 16.7%, that percentage being based upon those residents actually collecting unemployment. The unemployment figures do not take into consideration those residents whose hours have been reduced or those who have given up looking for employment. (T. 25, 26).
3. The City's unemployment rate is higher than that of Miami-Dade County or the Statewide average, primarily because of the dependence of its residents on the construction industry for employment. (T. 26).
4. Approximately 54% of the residents do not have health insurance. (T. 27).
5. A comparison of the ad valorem per capita total taxes levied for 2008 indicates that Hialeah is the poorest of the cities in the local area, and of those cities of comparable size statewide. (T. 13, City #3, Tabs 3, 4).

## **Government –**

6. The City is governed by a City Council and a strong mayor form of government. Under this form of government, the mayor acts in the capacity of a city manager, works directly with the city departments and makes all of the administrative decisions. As such, the mayor is in charge of the day-to-day operations of the City. (T. 23, 24).
7. Julio Robaina was elected mayor in 2005. Before that, he served for eight years as a member of the City Council, during five years of which he served as Council President. (T. 25).

## **Bargaining History –**

8. When he was first elected, Mayor Robaina renegotiated all three labor agreements in order that the City would become more competitive with other local jurisdictions. The renegotiations resulted in an increase in the COLA, specialty pay and other areas with the effect of raising the income of City employees. These CBA's expired on September 30, 2009. The increases are summarized in Tab 20 of City # 3. (T. 27, 28).

## City's Financial Condition –

9. The City's operating budget for 2007 was \$139 million, and increased to \$143 million in 2008. Due to declining revenues, the operating budget has been reduced to \$116 million for FY 2010-11. (T. 29; City #3, Tab 4).
10. To cope with reduced revenues, the City sought to reduce operating costs. Departments were combined, a hiring freeze was instituted, personnel were reduced in communications, sanitation routes were reduced, and pool, park and library hours were reduced. (T. 29 - 31).
11. Management employees have not received a raise since 2008. There is currently a management review group evaluating concessions to be implemented for management employees, with the recommendations due to the Mayor on September 22<sup>nd</sup> or 23<sup>rd</sup>. (T. 31, 32).
12. During this period, labor costs continued to escalate, from \$107,327,441 a year in Fiscal Year 2006, to \$116,487,858 a year in Fiscal Year 2009, an increase of over \$9,160,417. In Fiscal Year 2007, when General Fund revenue was \$127,692,563, the City's labor and benefit costs comprised about 84%. In Fiscal Year 2010, when General Fund revenue was \$125,860,938 (less than in Fiscal Year 2007) the City's General Fund labor and benefit costs were 87%. During this period, General Fund salaries increased by \$10,307,293 or 15%. (City #3, Tabs 4 and 14).
13. In addition to being faced with an anticipated reduction in revenue and increasing expenses, the City is also faced with an additional unanticipated reduction of revenue. While the City, in its 2010 Budget accounted for a reduction in revenue by estimating that it will receive \$128.9 million in the General Fund, the City actually collected \$125.9 million. Therefore, the City's collections proved to be \$3.1 million lower than expected. (City#3, Tab 10).
14. In Fiscal Year 2011, the situation worsened. By taking the City's 2010 Budget revenue numbers, which represent \$3.1 million more than was actually received, and comparing it to the 2011 Budget revenue numbers, the result is a \$12.4 million dollar decrease in revenue. Therefore, when the \$12.4 million dollar decrease in revenue in Fiscal Year 2011 is added with the \$3.1 million dollar difference between the projected and actual revenue in Fiscal Year 2010, the decrease in revenue totals \$15.5 million. (City #3, Tab 11)
15. In addition to the \$15.5 million reduction in revenue, the City will experience an increase of expenses in Fiscal Year 2011 in the amount of \$3.1 million. Approximately \$2.6 million of the overall increase in expenditures is the result of an increase of the City's contribution to the retirement system. The remaining \$500,000 increase comes as a result of an increase in the City's street light costs

due to the decreasing revenue from the Citizens Independent Transportation Trust (CITT). (City #3, Tab 18; City #2, Budget Message at p. 6).

16. In total then, when the \$15.5 million decrease in revenue to the General Fund is added to the \$3.1 million increase in overall expenditures from the General Fund, the City's shortfall is \$18.5 million.
17. In April, 2009, the Mayor met with representatives for all three bargaining units regarding the potential effect of the worsening economic conditions on the City budget for FY 2009-10. The Mayor requested a freeze in merit and longevity pay for the next fiscal year. The bargaining representatives rejected the Mayor's proposed freeze. (T. 34, 35; City #3, Tabs 13, 18).
18. As the Mayor considered the available alternatives to deal with the City's worsening financial situation, he specifically rejected the option of raising fees or taxes, concluding that the City's residents could not afford such increases in view of their own adverse financial circumstances. (T. 35).
19. The maximum millage rate allowed by law is 10 mills. In 2005, the rate was 7.1; in 2006, it was 6.8; in 2007, it was 6.8, in 2008, it was 6.54, and the current millage rate is 6.54. (T. 61, 87).
20. In April, 2010, the Mayor notified City Council that, if there were no changes in the revenue or expenditures for the remainder of the year, the City would experience a \$5 – 6 million shortfall. (T. 21, 36; City # 3, Tab 28).
21. Reductions in expenditures were made. Layoffs were necessary, including layoffs of Public Service Aids from the police department. Approximately 45 employees remain on the recall list. (T. 30, 37, 39).
22. Again the Mayor asked the bargaining representatives for concessions, and again the representatives refused. Impasses were declared with the bargaining units and the parties entered into the statutory impasse resolution process. (City #3, Tab 1; T. 36).
23. The City's proposed 2010-11 Budget indicates that the number of full time positions have been reduced by 243 through attrition and retirement from FY 2007-09 to FY 2010-11. The City has the fewest full time positions per population served of any comparable city in the State. (T. 14, 39-41; City #3, Tab 8).
24. The City has experienced a 19.2% reduction in property values, equating to a loss of \$10,797,610 in ad valorem collections. State revenue will decrease by \$1,206,742. City departments suffered a 10% decrease in revenue which equates to \$718,591. FP&L revenues decreased by \$1,099,089. The total loss in

revenue for FY 2010-11 is anticipated to be \$13,822,392. (T. 40 - 42; City #2, Budget Message).

25. The revenue generated by the half cent Miami-Dade transportation factor will also be reduced, and the pension costs will increase \$400,000 to \$3 million according to the actuarial study. (T. 43).
26. The City has completed the statutory impasse resolution procedures with AFSCME and the PBA resulting in approximately \$12 million in concessions imposed by the legislative body. (City # 2, Budget Message).
27. The AFSCME imposed concessions are as follows:
  - a. No cost of living adjustment to base pay;
  - b. Freeze merit step increases and fifteen year longevity pay increases as of July 13, 2010;
  - c. Require all bargaining unit members to contribute 10% (pre-tax) of their base salary, excluding overtime earnings. Toward the cost of health insurance coverage;
  - d. Furlough full time employees one day for each pay period (14 day working cycle) commencing July 10, 2010, and part-time employees working at least 30 hours per week shall provide 6 hours of furlough each pay period.;
  - e. Change the pension plan for new employees hired on or after October 1, 2009, to a 5% contributory plan with benefits to be determined on a 5-year average of the highest pay years, rather than the existing 3-year average. Under the plan for the new employees, the employee will not be required to contribute 7% to the annuity fund. (City #2, Budget Message).
28. The PBA imposed concessions are as follows:
  - a. No cost of living salary adjustment to base pay;
  - b. Freeze merit increases and 5% 10-year special longevity pay increases as of September 1, 2010;
  - c. Freeze shift differential pay as of September 1, 2010;
  - d. Require all bargaining unit members to contribute 12% (pre-tax) of their base salary, excluding overtime earnings, toward the cost of health insurance coverage;
  - e. Payment of overtime commences at 86 hours during 14-day pay cycle, increased from 80 hours; and
  - f. Eliminate paid holidays. Officers will receive straight time for hours worked during shift. (City #2, Budget message).
29. As of September 10, 2010, the date of the submission of the proposed 2010-11 Budget, there remained a projected budget shortfall of approximately \$6,188,380. This figure was updated as September 16, 2010, to a shortfall of \$5,001,778 with a summary statement indicating that the range of the FY 2010 overbudget as

being between \$4 - 6 million, with a projection of \$5 million as mid-point. (City #2, Budget Message; City #3, Tab 28).

30. As of the date of hearing, the salaries of non-union employees have not been reduced, nor have their pension or health insurance benefits been reduced. The Mayor indicated at hearing that there would be some reductions in wages and benefits for these employees effective October 1, 2010. (T. 71 – 73).

#### **Class I Fire Department –**

31. The City is extremely satisfied with and proud of its fire department which was recently recertified as a Class I Fire Department. The Mayor testified,  
“They are professionals, they do their job, they do it right. They serve the residents of the city with the utmost respect, and I have only had positive, good things to say about their performance and how they operate on a day to day basis.” (T. 29).

### **DISCUSSION**

#### **FACTORS TO BE CONSIDERED BY SPECIAL MAGISTRATE**

Section 447.405 provides that the special magistrate “shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful and just settlement of disputes . . . .” Section 447.405 specifies that the following factors, among others, shall be given weight by the special magistrate in making recommendations to resolve the impasse:

- (1) Comparison of annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like 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 governmental bodies of comparable size within the state.
- (3) Interest and Welfare of the Public.
- (4) Comparison of peculiarities of employment with regard to other trades or professions.
- (5) Availability of Funds.

#### **FACTORS 1 & 2 - COMPARISON OF ANNUAL INCOME**

The City presented evidence to establish that it dedicates 22.5% of its general fund to the fire department. In the local operating area, only the City of Hollywood dedicates a bigger percentage of the general fund to its fire costs. Fort Lauderdale, Coral Gables and

the City of Miami dedicate a smaller percentage to its fire costs. Miami Beach dedicates approximately the same. (City #3, Tab 26). The City points out further that, while the City dedicates 22.5% of its general fund to the fire department, St. Petersburg and Tampa dedicate a mere 15.2% and 18.4% respectively. The closest city is Orlando at 22.1% .

No evidence was presented or argument made by Local 1102 regarding this factor.

While the evidence presented indicates that the City commits a greater percentage of general fund dollars to the fire department than do other jurisdictions, this evidence does not specifically address a comparison of annual incomes.

There was additional evidence of record to indicate that, in 2006, the City renegotiated its CBA with Local 1102 because the City found itself in a non-competitive position with other local jurisdictions regarding annual income. There were adjustments at that time in wages and other benefits.

### **CONCLUSION**

There is no evidence of record to indicate how the current wages and benefits of Local 1102 bargaining unit members compare with other jurisdictions, and thus no conclusion can be reached regarding these factors. For the same reason, no conclusion can be drawn regarding a comparison of annual income if the concessions proposed by the City were adopted or imposed.

### **FACTOR 4 – COMPARISON OF PECULIARITIES OF EMPLOYMENT**

Neither the City nor Local 1102 offered any evidence or argument concerning this factor.

### **FACTOR 3 – INTEREST AND WELFARE OF THE PUBLIC**

The City maintains that there are two material considerations pertaining to this factor: 1) the public's ability to pay for increased taxes, and 2) the public's need for City services such as the service provided by the Fire Department.

The city's position regarding the public's ability to pay increased taxes, as indicated previously, is severely compromised by the economic situation confronting City residents. Consequently, the Mayor and the City Council have indicated that raising taxes would not be in the interest of the public and is therefore not an option.

The City points out that the public's need for City services, such as the service provided by the fire department, is secured because the City is contractually obligated to maintain its staffing levels due to its acceptance of the Urban Area Security Initiative (UASI) federal grant. Under the terms of the UASI grant, the City is prohibited from laying-off employees in a manner that would violate the minimum staffing requirements set forth therein. Additionally, in the recent past, the City was able to provide state of the art equipment and capital improvements to the fire department.

With regard to the other services provided by the City to its residents, the record reflects that these services have been reduced in a variety of ways including the reduction of park, pool and library hours, the reduction in the sanitation routes, reduction in the manning of police stations by PSA's, the combining of departments, and the overall reduction of the workforce by 10% over three years which would arguably result in an overall reduction of services.

Local 1102 did not offer any evidence regarding this factor.

**CONCLUSION – Interest and Welfare of the Public**

The record reflects that the interest and welfare of the public has already been adversely affected by the City's declining financial situation due to the reduction of services provided by the City. It is concluded that additional reductions in departmental budgets would not be in the interest and welfare of the public.

However, the record does not support the determination made by the Mayor that an increase in taxes or fees would be adverse to the interest and welfare of the public. The Mayor's position in this regard is understandable. However, the record indicates that the property values for City residents plummeted 19.2% during the last fiscal year. Consequently, it would have been possible to raise the millage rate without increasing the amount of taxes paid by individual residents due to the declining taxable value of their property.

**FACTOR 5 – AVAILABILITY OF FUNDS**

As in virtually every other public sector impasse hearing, there is a disagreement concerning the availability of funds.

**Local 1102's Position –**

Local 1102 presented two basic arguments in support of its position that the status quo should be maintained for bargaining unit members. First, Local 1102 asserts that "any financial straits into which the mayor and council have sailed the City are of their own devise, the result of political, not economic, decisions." (Local 1102 Br. at p. 1). Local 1102 correctly points out that, in 2005 the millage rate was 7.1. In 2006 and 2007, the City lowered it to 6.8. In 2008, the City lowered it again to the present rate of 6.54. It is Local 1102's position that the City would have significant additional revenues just by restoring the tax rate to where it was just a few years ago. However, as the record indicates, the City Council, consistent with the Mayor's recommendation, refused to increase the millage rate.

Second, Local 1102 argues that the City has ample funds to maintain the status quo for its bargaining unit members. Local 1102 argues further that the City has made a political choice not to use any of the "tens of millions of dollars at its disposal" to pay for

employees' wages or benefits. Local 1102 refers to City #4, which indicates that the City had on hand at the end of August, 2010, an unrestricted fund balance of \$38,758,321.

Furthermore, Local 1102 argues that the City has placed tens of millions of dollars of unrestricted funds in its Water and Sewers Department. Local 1102 suggests that consequently, these funds are not fully reflected in the general fund that is the focus of many of the City's economic exhibits. Local 1102 points out that Mayor Robaina testified that he knew of no legal obligations that would preclude the almost \$40 million in unrestricted water and sewer funds from being used for other purposes. (T. 63). Local 1102 asserts that "The City presented no argument or evidence on this point that would prove the funds were restricted as a matter of law or otherwise unavailable to fund employees' wages and benefits." Local 1102 concludes that, "While Robaina testified that the City intended to use some of the funds for capital expenditures, even were the City to use in the next fiscal year the entire \$25 million he cited, that would still leave more than \$10 million at the City's disposal." (Local 1102 Br. at p. 2, 3).

The Union proposes to resolve the impasse as follows:

- To freeze merit step increases for FY 2010-2011 and FY 2011-12, with language reinstating them effective September 30, 2012;
- To freeze 15th year longevity pay raises for FY 2010-11 and 2011-12, with language reinstating them effective September 30, 2012; and
- To leave all other articles as status quo or as previously agreed to between the parties.

The Union seeks nothing more than to maintain the status quo. The Union proposes an agreement to be effective from 10/1/09 to 9/30/12.

#### **City's Position –**

In its brief, the City conceded that, "often times, the question of availability of funds is really a question of choices on behalf of the City, not an actual unavailability of funds. A question of how the City wants to spend its funds rather than whether it could." However, the City maintains that it has run out of such choices. (City Br. at p. 2).

The record establishes that the City's revenue has been declining while its labor costs have been increasing. (City #3, Tabs 4, 14). To cope with this problem, the City has engaged in numerous expense cutting efforts. Among these efforts, as explained by the Mayor, were: 1) maximizing efficiencies in every department; 2) laying off of employees; 3) combining departments; 4) requiring a hiring freeze for non-essential personnel, 5) requiring directors to manage two departments; 6) merging communications for fire and police; 7) designing and implementing a furlough system; 8) reducing garbage routes, 9) reducing hours of operation for pools, parks and libraries and; 10) not providing raises for all management employees since October 2008. (T. 29 -33).

In addition to the steps indicated above to reduce operating costs including the reduction of services, which have resulted in the loss of approximately 10% of its full time

employees since 2007 through attrition and retirement, the City laid off approximately 45 employees in April, 2010.

The City's evidence concerning the significant concessions imposed upon the bargaining units represented by AFSCME and the PBA after exhaustion of the statutory impasse resolution process is uncontroverted.

The City's evidence concerning the projected shortfall of \$4 – 6 million for FY 2011 is compelling and uncontroverted.

With regard to Local 1102's argument concerning the increase of the millage rate, the Mayor's testimony is unequivocal on this point. He refused to recommend an increase because it is his position that the effects of such an increase would be detrimental to the residents of the City who, as the record reflects, are already more economically disadvantaged than their counterparts in other local jurisdictions.

Finally, and most significantly on this point, the City points out that "the Special Magistrate need not consider this moot issue because the time to raise the millage rate for the next fiscal year has expired." (City Br. at p. 11).

With regard to Local 1102's argument that the City could use \$10 million from unrestricted funds in the Water and Sewer departmental budget, the City presents a lengthy argument to support its conclusion that the use of Water and Sewers funds to subsidize labor costs for Fire Department is prohibited by Florida Law. (City Br. at p. 8 – 10). The City's argument is compelling and uncontroverted. The City points out that Water and Sewers generally receives its revenue from fees paid by customers in exchange for services pertaining to water and sewers. Additionally, the revenue received by Water and Sewers is contained in an enterprise fund, not the City's General Fund.

The City points out that, as a fee, the City, pursuant to Fla. Stat. § 180.13, may only "establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby." Furthermore, because the rate charged for water and sewers services is a fee, Florida law requires that the revenue generated from such fees must "provide a direct benefit to those paying the fee." *Volusia County v. Aberdeen*, 760 So. 2d 126, 135 (Fla. 2000). Conversely, if the revenue generated from the water and sewers rates are used for the "general benefit of the public," the rates are not fees; instead, they are truly an unlawful tax. *Id.*

The City concludes on this point as follows:

*In light of the legal restrictions on the amounts that can be charged for water and sewers services and the manner in which these funds can be used, the Union's contention that the City is able to use Water and Sewers funds to subsidize the fire department's labor costs proves to be fatally flawed. Specifically, if funds from Water and Sewers were used to pay for the labor costs of the fire department,*

*then, those funds are not being used to provide water and sewers services. Instead, the funds would be used "for the general benefit of residents" because there is no direct nexus between the expenditure and the rendering of services to Water and Sewers customers or improvements of the Water and Sewers system. By definition then, those funds were collected as a tax, albeit under the guise of a fee. Because the revenue generated by Water and Sewers is part of an enterprise fund rather than the General Fund, the imposition of such a tax is unlawful. Indeed, such illegal action would undoubtedly subject the City to great legal exposure, including, but not limited to, a potential class action lawsuit by Water and Sewers customers.*

(City Br. at p. 9).

Local 1102 offers no argument to the contrary other than its assertion that such funds are available to fund the status quo for bargaining unit members.

With regard to Local 1102's position that the City should use a portion of the \$38 million in the unrestricted fund balance, the City argues that, as explained by the Mayor during cross-examination, the City, unlike other political subdivisions, does not have a reserve or contingency reserve account. (T. 60). Instead, it relies on its Fund Balance to pay for unanticipated events. The City maintains that, because of the basic distinction between liquid and non-liquid assets, the City's Fund Balance is of critical importance since the Fund Balance is comprised of cash, the most liquid of all assets.

The City notes that, at a minimum, political subdivisions are advised to maintain no less than 15% of its general fund as a contingency reserve, at all times. Accordingly, the City, as reflected in the last page of Tab 15 of City's Exhibit 3, had approximately \$22.1 million in its fund balance on 9/14/2007. By contrast, on 9/14/2009, the City had only \$11.6 million in its fund balance. While the Fund Balance was already significantly low in September of 2009, it is the City's position that the City's Fund Balance on 9/14/2010 is conclusive evidence that the City is in desperate need of concessions by the Union. According to the City, on 9/14/2010, the City's Total Fund Balance was \$4.4 million when the amount in the General Fund dictates that the City should have, at minimum, \$19.3 million as a contingency reserve. (City Br. at p. 8).

The City argues further that, to make matters worse, the City's collection of its ad valorem taxes does not begin until months after the 2011 Fiscal Year begins. Thus, the cash the City has in the Fund Balance at the end of a fiscal year must be used to run the City for the months prior to receiving revenue from ad valorem taxes. Therefore, the relatively small amount that the City does have in cash at the start of the 2011 Fiscal Year cannot be used in the event of a major emergency because these funds have been committed.

As a practical matter, the City sends out its notices of ad valorem taxes in October. Residents then have 5 months to pay the ad valorem taxes. Since the revenue for ad valorem taxes comes in at different times, the City needs cash to pay things such as

payroll prior to collecting the ad valorem taxes. The City concludes that the Fund Balance is not available for funding labor costs and maintaining the status quo for Local 1102 bargaining unit members.

### **CONCLUSION**

The evidence on this record establishes that the City of Hialeah does not have sufficient funds available to fund maintenance of the status quo for Local 1102 bargaining unit members. This is an unusual finding for this special magistrate. Usually, as both the City and Local 1102 pointed out in their briefs, the question is not whether there are sufficient funds available to fund the union proposal. Instead the question, as the parties again noted, is one of choices. The local government may choose to fund the union proposals by choosing to reduce other government functions or services. A choice could be made to reduce the amount of the unrestricted fund balance. Or, the local government could choose to increase fees and/or taxes.

The evidence on this record suggests that none of these choices are an option for the City of Hialeah. The record evidence demonstrates that the unrestricted fund balance is dangerously low given the lag between the collection of the taxes and the obligations to continue to operate the City and pay the bills. In addition, it is not fiscally prudent to fund recurring costs, such as maintaining the status quo for Local 1102 bargaining unit members, with non-recurring funds.

Furthermore, as indicated above, the option of further reducing services to the City residents would not be in the public interest.

Finally, the option of raising the millage rate is not available due to the fact that the time for taking such action has passed. There remains the possibility of raising fees for services, but there is no indication on this record that an increase sufficient to fully fund the status quo for bargaining unit members is a viable option.

### **RECOMMENDATION**

Given the conclusion that there are not sufficient funds available to fund the maintenance of the status quo for Local 1102 bargaining unit members, it is necessary to consider the concessions proposed by the City. Furthermore, consideration of these concessions is appropriate considering the obligation of the special magistrate, pursuant to 447.405, to “render recommended decisions with the objective of achieving a prompt, peaceful and **just** settlement of disputes . . . .” (Emphasis added). As indicated above, both AFSCME and PBA went to impasse with the City, exhausted the impasse resolution process, and the City imposed concessions on those bargaining unit members. Given the facts on this record, it is “just” that similar concessions be recommended regarding Local 1102 bargaining unit members.

**City's Proposed Concessions –**

To address the projected shortfall, the City indicated at hearing that it needed approximately \$4.4 million in concessions from Local 1102. The mayor presented a request (City # 5) for the following concessions as a means of achieving the stated goal of \$4.4 million:

○ Elimination of 11 paid holidays and payment of straight time for hours worked	\$900,000
○ Freeze of merit step increases as of October 1, 2010	\$415,000
○ Freeze of 5% 15 year longevity pay raises as of October 1, 2010	\$33,000
○ Elimination of birthday as paid holiday	\$61,000
○ Insurance savings commencing October 1, 2010 (City #6)	\$630,234
○ Change of multiplier from 3% to 2.5% for each year of service for each new year of service not eligible for normal retirement benefit multiplier as of October 1, 2010, and new employees hired on or after October 1, 2010 (Scenario 2 in GRS Actuarial Study)	\$289,108
○ Change to 5% contributory system for new employees hired on or after October 1, 2010, with 5-year highest years of compensation	\$ 0.00
○ 7% reduction in salary	\$1,231,372
○ Accrual of Specialty Pay only for time where firefighter works within that specialty based on 7% salary reduction to base pay together with specific provisions for individual classifications	\$863,082
<b>Total:</b>	<b>\$4,423,097</b>

At hearing, the Mayor indicated that these proposed individual reductions were not inflexible, but he maintained that the total of the concessions, in whatever form, must be \$4.4 million. (T. 79 - 81). In fact, the City in its brief stated as follows:

While fiscal responsibility and necessity require that the City obtain a certain dollar amount from the Union, the City realizes that the Union may be able to more adequately determine how that dollar amount is reached. This is why the City, as explained by the Mayor, is far from fixed on the manner in which the solution is crafted. (See Hearing Transcript at section 78, line 8 – section 80, line 3) Instead, the City remains open minded about recommendations that may be made by the Union regarding the way its membership prefers to get to the necessary number.

The City continues:

. . . the City presents only suggested solutions to be considered by the Special Magistrate. The City understands that concrete and definitive proposals are

generally expected at this time. Yet, the City cannot characterize the following language as concrete proposals under the current circumstances. Nonetheless, the City has calculated the savings that will accrue to the City for each suggested solution in City's Exhibit 5.

As indicated above, Local 1102 proposed to resolve the impasse as follows:

- To freeze merit step increases for FY 2010-2011 and FY 2011-12, with language reinstating them effective September 30, 2012;
- To freeze 15th year longevity pay raises for FY 2010-11 and 2011-12, with language reinstating them effective September 30, 2012; and
- To leave all other articles as status quo or as previously agreed to between the parties.

### **Initial Recommendation**

The respective positions of the parties strongly suggest that the best alternative available to the parties is to meet, discuss and agree to concessions that approximate the amount of \$4.4 million that the City has established on this record as being required to reach an agreement.

As the City suggests in its brief, the parties are better equipped than the special magistrate to make a determination as to which of the undesirable options are the least objectionable. In fact the City is almost apologetic in stating that it is aware that it is expected to present concrete proposals for the special magistrate's consideration. However, the City states that it "cannot characterize the following language as concrete proposals under the current circumstances." (City Br. at p. 17). Obviously, there is room for discussion and the City remains flexible as to the nature of the concessions to be made.

The special magistrate is not unmindful of the fact that reaching tentative agreement at the bargaining table does not necessarily indicate that the bargaining unit members will vote to accept the tentative agreement. With this consideration in mind, it is recommended that the parties meet and conclude their negotiations, and that the bargaining unit members vote on any tentative agreement, within the 20 days provided for by statute for the parties to file a notice with PERC rejecting all or a portion of these recommendations. Failure to reach tentative agreement, or failure to ratify the tentative agreement, would result in either or both parties notifying PERC of the rejection of the recommendation(s), and the statutory impasse resolution process would proceed within the time limits required by statute.

It may be argued that 20 days is too short a time to reach a tentative agreement and submit it to a vote of the membership. I respectfully disagree. The parties, by now, are thoroughly familiar with the options available and the amount of reduction in expenditures required. The City has indicated its flexibility and willingness to consider alternative proposals. Faced with the option of imposition by the legislative body of the

list of concessions proposed by the City, Local 1102 can quickly determine whether there is anything to be gained by entering into bargaining to modify the list, and the membership can easily compare the tentative agreement, assuming that there is one, to the list that will be imposed by the City, and determine whether ratification is in their best interests. Given the imposition of concessions on the AFSCME and PBA bargaining units, the handwriting is already on the wall as to the City's probable action if there is no agreement between the parties as to the resolution of the impasse.

Furthermore, it is suggested that the City has nothing to lose from such a scenario, because the time limits for rejecting the recommendations and proceeding to the legislative body are not extended. Failure to reach agreement or failure to ratify will produce the same result as if the attempt to reach agreement had not been made.

### **Recommendation in the Alternative**

Assuming for the sake of this discussion that the Initial Recommendation is rejected by one or both parties, it is necessary to make a recommendation for the resolution of the issues in dispute. As indicated above, it is concluded that concessions are appropriate. The City has provided argument in support of the various proposed concessions indicated in City #5. The City's proposals and rationale, and the special magistrate's recommendations are as follows:

#### **Article 37 – Health Insurance Provisions**

The City offers three different health and hospitalization options for newly hired firefighters who make a one time irrevocable selection at time of employment: 1) A Self-Funded Group Health program; 2) a Health Maintenance Organization (HMO) program and; 3) the IAFF run Group Health Program (“IAFF plan”).

#### **Self Funded Plan –**

The City suggests a prospective increase to an employee participant's bi-weekly premium by 5.00 per category in its Self-Funded Group Health program as follows:

1. Employee only - \$80.00
2. Employee + 1 dependent - \$104.00
3. Employee + 2 or more dependents - \$114.00

#### **HMO Plan –**

The City suggests a 3% increase in the City's current contribution to the HMO plan. The City also suggests that there not be in increase in its employees' contribution to the HMO plan. This suggestion is made to further the City's goal of trying to treat all unions equally and fairly since AFSCME and PBA are currently receiving a 3% increase in the City's contribution to the HMO plan.

#### **IAFF Plan –**

More than 95% of IAFF bargaining unit members are in the IAFF Plan. The City suggests a decrease in the City's contribution to the IAFF plan to an amount equal to the amount the City contributes to the HMO plan, including the suggested 3% increase to the

City's contribution to the HMO plan. Currently, the IAFF is the only union that has three health insurance options for newly hired employees who make a one time irrevocable election of one of the three plans. In the past, the City has contributed more to the IAFF plan than to the HMO plan. At this time, the City cannot justify any preferential treatment to a single union.

During negotiations, the IAFF has suggested that the City contribute whatever its cost to its Self-Funded plan is to the IAFF plan. This idea is problematic for the following reasons. First, this idea overlooks the fact that the City does not pay premiums for its Self-Funded plan. It pays the true cost of rendering medically services for those in the Self-Funded plan. Because the cost of the Self-Funded plan changes every week, month and year, the fluidity of its cost makes it impossible to extract an amount that would be contributed to the IAFF plan. Secondly, the IAFF seeks preferential treatment. All unions in the City are making difficult sacrifices as became evident after the culmination of two impasse procedures. Thus, the City seeks to treat all unions equally and fairly.

To provide the Union with more options, the City is willing to take an all or nothing approach allowing all employees in the IAFF plan to select either the Self-Funded or the HMO plan. Alternatively, if all employees in the IAFF plan are not willing to leave the IAFF plan, the City will contribute the same amount it contributes to the HMO plan. This way, fire employees can get the Self-Funded plan if they desire.

### **Recommendation**

It is recommended that Local 1102 accept the City's health insurance proposals. There is very little evidence of record on this subject. The increases to the self funded plan do not seem excessive, especially when considering the increases imposed on AFSCME and PBA bargaining unit members. The 3% increase in the City's contribution to the HMO Plan seems to benefit the employee, and is consistent with the increase in contribution provided to the AFSCME and PBA bargaining units. The City's position with regard to the IAFF Plan seems reasonable and equitable. The "all or nothing" option makes sense as well, in that it seems to place all City employees on equal footing as far as the City's contribution is concerned. Local 1102 has not offered any evidence or argument to justify a greater City contribution to its bargaining unit members for health insurance benefits.

### **Article 38 – Pension**

The City's retirement system offers three sources of income:

#### 1) Annuity -

The first source of income offered by the City's retirement system is the Annuity. All City General Civil Service Employees transfer 7% of their wages to an annuity account. The Annuity account in turn earns interest. An employee receives the 7% transferred to the Annuity account, plus interest, at the time of separation from the City, irrespective of the reason for separation or the years of service.

2) Basic Pension -

All City General Civil Service Employees receive a basic pension of \$1,800 upon attainment of 70 points (age plus a minimum of twenty years of service) or \$2,800 if the employee receives a vested or deferred retirement (10 years of service).

3) Service Pension -

All City General Civil Service Employees who have at least 20 years of service and their age and years of service total at least 70 points are entitled to a Service Pension equal to 3% of the average of the employee's three highest paying years, with a maximum of 25 years of service. These employees are also entitled to a Cost Of Living Adjustment (COLA) as provided in the Hialeah Code.

Suggested Changes -

The City seeks to change only the Annuity and Service Pension portion of the City's Retirement System. To calculate the impact of the City's pension suggestion, the City requested two 30 year actuarial studies from Gabriel Roeder Smith & Company ("GRS"), detailing the economic implications.

1) Change of Multiplier -

One of the City's suggestions is to change the pension multiplier from 3% to 2.5% for new Fire employees and for future benefits earned by current Fire employees who have not reached 70 points for full retirement benefits. (City # 10, p. 2-3)

2) Increase to basic pension for normal retirement benefits -

City suggests that the basic pension benefits for normal retirement or full benefits be increased from \$1,800.00 to \$1,850.00.

3) 5% Contribution by New Employees -

The City proposes requiring a 5% contribution to the Service Pension by new employees hired on or after October 1, 2010. However, unlike current employees, new employees will not need to transfer 7% of their wages to the Annuity Fund. Currently, Fire employees at the City contribute 0% to the Service Pension. (City # 9, p. 2,3).

4) Change in Computation of Final Average Compensation for New Employees -

The City proposes altering the Employees Final Average Compensation for new Fire employees by using the average of an employee's salary for the highest five years of service instead of the highest 3 years of service. (City # 9, p. 4,5).

City's Rationale –

While the suggested changes will provide little actuarial savings at the outset, the long-term savings are particularly necessary and long overdue. This suggestion highlights the inherent and constant struggle faced by the City during labor negotiations. For both altruistic and self-serving reasons, the City seeks to create and cultivate a content workforce. The City appreciates that wages, retirement, and other benefits are important components of employee satisfaction. However, the City also recognizes that it needs to

be financially responsible for the benefit of its residents and future employees. To be financially responsible, the City must look towards and prepare for the future. Unfortunately, preparing for the future sometimes involves curtailing previous benefits. On balance, however, the financial forecasts require this change in the Service Pension.

### **Recommendation**

It is recommended that Local 1102 accept the City's pension proposals. The evidence presented by the City through testimony and exhibits indicates a need to address increasing pension costs immediately. (T. 106 – 120; City #9, 10). The proposals made by the City are consistent with those imposed on AFSCME bargaining unit members. The fact that there is no evidence on this record regarding any changes to the pensions of PBA bargaining unit members is disconcerting. Nevertheless, the proposed changes seem well reasoned and have only a prospective impact on bargaining unit members. The benefits earned by current bargaining unit members remain intact.

### **Article 41 – Holidays**

The City suggests an elimination of 11 paid holidays and payment of straight time for hours worked. The City also suggests an elimination of employee birthdays as a paid holiday.

### **Recommendation**

It is recommended that Local 1102 accept the proposed elimination of 11 paid holidays. This proposal is consistent with that imposed on the PBA.

It is recommended that the City withdraw its proposed elimination of the employee birthday as a paid holiday. This proposal is NOT consistent with the holiday proposal imposed upon the PBA. The savings of \$61,000 is not significant enough to justify this disparate treatment.

### **Article 45– Special Pay**

1) EMT –

The City suggests that specialty pay for EMT go from a 2% supplement calculated from base pay to \$27.00 per pay period.

2) EMT Assigned to an ALS Non-Transport Unit -

The City suggests that specialty pay for EMT assigned to an ALS non-transport unit go from a 6% supplement calculated from base pay to \$85.00 per pay period.

3) Paramedic -

The City suggests that specialty pay for paramedics go from an 8% supplement calculated from base pay to \$125.00 per pay period.

4) Paramedic Assigned to a Non- ALS Transport Unit -

The City suggests that specialty pay for paramedics assigned to a non-ALS transport unit go from a 12% supplement calculated from base pay to \$185.00 per pay period.

5) Paramedic Assigned to an ALS Transport Unit -

The City suggests that specialty pay for paramedics assigned to an ALS transport unit go from a 16% supplement calculated from base pay to \$240.00 per pay period.

6) HAZMAT -

The City suggests that specialty pay for HAZMAT go from a bi-weekly specialty pay of 5% of base pay to \$75.00 per pay period.

The City presented no evidence or rationale for these reductions other than the fact that such reductions result in a savings of \$863,000.

### **Recommendation**

The adoption of these proposals would result in significant savings. As may be seen in the previous recommendations, one of the criteria for making a recommendation regarding an unresolved issue is whether it will result in a “just” settlement. Unfortunately, there is little evidence on this record to support such a determination. The record indicates that AFSCME bargaining unit members suffered a very significant reduction in income due to the imposition of furloughs, in addition to the imposed increase in contribution for health insurance. The record is less clear regarding the impact of the imposed concessions on the income of PBA bargaining unit members. Nevertheless, from this record, it cannot be concluded that this concession would result in disparate treatment or an unjust resolution. Consequently, it is recommended that the Local 1102 accept this proposal.

### **Article 50 – Pay Plan**

The City proposes the following:

- 1) Freezing of Merit and Longevity Step Increases as of October 1, 2010;
- 2) 7% reduction to base salary of employees.

The City presented no evidence or rationale for these reductions other than the fact that the proposal to freeze merit and longevity pay would result in a savings of \$448,000, and a 7% reduction in salary would result in a savings of \$1,231,372.

### **Recommendation**

It is recommended that Local 1102 accept the City’s proposal to freeze merit pay and longevity step increases. These proposals are consistent with the steps taken by the City in the imposition of adjustments to the pay plans of PBA and AFSCME bargaining units.

With regard to the 7% reduction in salary, the record is not as fully developed as it could be to support this recommendation. Unlike some of the other City proposals, this proposal would have an immediate and significant impact on bargaining unit members. It could result in their inability to meet current living costs, including car payments and/or

mortgage payments. It is suggested that few City employees have an adequate cushion in their monthly budget to absorb a 7% reduction in take home pay.

This proposal would not be recommended absent evidence of a similar reduction for other City employees so that it can be determined that there is no disparate treatment of members of the bargaining unit represented by Local 1102. In other words, it is necessary for the undersigned to determine that the recommendations contained herein are “just” and equitable when compared to the impact of the previously imposed conditions on other City employees.

City # 2 contains information that appears to address this point. According to the Mayor’s Budget Message, the AFSCME bargaining unit members were required to contribute 10% of their base pay toward the cost of health insurance, as well as accept one furlough day each pay period. The PBA bargaining unit members were required to contribute 12% of their base pay toward health insurance coverage, and forego overtime pay until 86 hours. These imposed concessions all result in a significant reduction in take home pay.

The information that is not contained in this record is an indication of how much AFSCME and PBA bargaining unit members contributed previously toward their health insurance coverage – i.e., what percentage of their base pay were these employees contributing to pay for health insurance before the legislatively imposed increase in contribution. If that information were available, it would be possible to determine if the proposed reduction of 7% to firefighters’ base pay is comparable. However, that information is not available.

Nevertheless, it is not unreasonable to assume that the contribution of 10% for health insurance coverage and the furlough days for AFSCME bargaining unit members, and the 12% contribution and the loss of overtime for PBA bargaining unit members was at least as significant as the reduction of 7% of the base pay for members of the Local 1102 bargaining unit. Consequently, it would seem that, as draconian as this proposal is, the other represented City employees experienced an imposition of similar impact.

### **Recommendation**

It is with great reluctance that it is recommended that the City’s proposed reduction of 7% of base salary be accepted. As indicated above, the impact of this proposal on the lives of bargaining unit members is extreme. However, no other viable options were presented by either party, and as indicated above, the City has made its case that it cannot continue to fund the status quo.

## CONCLUDING REMARKS

The City made it clear at hearing that it needed concessions from Local 1102 in the amount of \$4.4 million. The record evidence supports this determination. Local 1102 did not present evidence to controvert this determination, nor did it diminish its credibility during cross examination of the City's witnesses.

With the exception of the \$61,000 savings for the loss of the birthday holiday that was not recommended, the above recommendations are consistent with the City's proposed concessions. To state that these recommendations are not entered into without great reservation is a gross understatement. The undersigned has *never* made a set of recommendations so severe. The recommendations were made because the City made its case regarding the availability of funds and because the City has already imposed an equally severe set of concessions on its other two bargaining units. If both of these factors were not supported by this record, the recommendations would have been substantially different.

It is unfortunate that this hearing took place as late in the budget making process as it did. As pointed out by the City, the timing of the hearing precluded a recommendation to increase the millage rate. The millage rate has been set.

Given the facts on this record, it is respectfully submitted that a recommendation to increase the millage would have been appropriate. As indicated in the discussion concerning the availability of funds, the record indicates that the property values for city residents continued to decline during the last fiscal year. Consequently, it would have been possible to increase the millage rate and generate additional revenues for the City without increasing the actual amount of taxes paid by individual City residents.

The Mayor expressed his unwillingness to recommend raising the millage rate. His rationale for taking this position is understood. However, it is respectfully suggested that he should consider recommending raising the millage at the first available opportunity. The residents of the City of Hialeah are indeed suffering during this economic crisis. However, the City employees, many of whom are also City residents, are suffering as well. Who among us could readily absorb a 10% reduction in take home pay such as is being imposed as the result of these legislatively imposed concessions?

Absent the ability to raise the millage rate to address the budget shortfall, it is suggested that the City consider increasing some of the fees for services received by the City residents. Unlike the millage rate, the service fees and the budget may be adjusted at any time during the fiscal year. Given the nature of these fees, and the number of residents who pay them, these increases would be minimal for individuals, but could generate revenue sufficient to reduce the projected shortfall. Given the apparent high quality of the services provided by City employees, it is not unreasonable to assume the City residents would be amenable to a small increase in service fees.

Assuming for the sake of this discussion that the City would make a commitment to increase fees, it would seem reasonable for the parties to consider accepting the Initial Recommendation above and return to the table to again address the proposed reductions in expenditures with the newly anticipated revenue in mind. Perhaps the considerable financial burden placed on these employees could be diminished somewhat. The employees of this Class I Fire Department deserve no less.

Respectfully submitted this 14<sup>th</sup> day of October,

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Thomas W. Young III  
Special Magistrate