

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN OF PALM BEACH PUBLIC EMPLOYEES RELATIONS COMMISSION

May 17, 2006 1:00 p.m.
Town Hall Conference Room

1. Call to Order. Chair, Helen Hoffman.

The meeting was called to order by Chair, Helen Hoffman at 1:00 p.m., on Wednesday, May 17, 2006, in the Town Conference Room. All of the Commission members were present: Chair, Helen Hoffman, Members Alec Flamm and Peter Graves. Also present were: Attorney Jeffrey Pheterson, on behalf of the Commission; Attorney David Kornreich, on behalf of the Town of Palm Beach, and William C. Crouse, Human Resources Director for the Town of Palm Beach. Attorney Matthew Mierzwa (representing Professional Firefighters/Paramedics of Palm Beach County, local 2928, IAFF, Inc.) was not present at the meeting.

2. Introductions of Commission Members.

Chair, Helen Hoffman commented that she had been on the Palm Beach Public Employees Relations Commission for a number of years, because she was one of the few people living in Town who was a labor arbitrator and who once taught labor law.

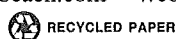
Alec Flamm commented that he had been a resident of Palm Beach for twenty years, was active on a fair number of civic and cultural organizations in Town, and had spent 38 years with Union Carbide, and retired as president of that corporation.

Peter Graves commented that he had been a lifelong resident in South Florida, and had been president of the American Federation of Musicians, and was still somewhat active in the music business.

3. PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF PALM BEACH COUNTY, LOCAL 2928, IAFF, INC., Charging Party, v. THE TOWN OF PALM BEACH, Respondent, Case Number CA-04-001.

PERC 5-17-06

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Final Approval of Settlement.

Attorney Jeffrey Pheterson explained that this case had been filed in 2004, and was an unfair labor practice case, filed by the Firefighters local 2928, against the Town of Palm Beach, for basically a course of conduct bargaining charge – 8.1, 8.3, and 8.5 charges under the National Labor Relations Act (NLRB), although there were corollary provisions and the state law would look to the federal law. It was the same principle, but with public employees instead of private employees. The process was similar in the sense that with the charges filed with the NLRB, the general counsel first makes a determination as to whether the charge is sufficient to go forward and issues a complaint with the NLRB. Under the Town of Palm Beach, ordinance, which is patterned after the State Statute, there is a Notice of Sufficiency – basically the same thing.

Attorney Pheterson explained that he had found some pieces of this case to be sufficient to go forward to a hearing; other pieces were found not to be sufficient and were subject to a Summary Dismissal. There was an appeal of that Summary Dismissal that came to this full Commission one year ago. The case was assigned to a Hearing Officer, Bill Powers. He was assigned as the Hearing Officer, and he had scheduled the hearing date, which was then subject to several continuances as the parties were trying to work out their issues. Subsequent to that, the matter was resolved to the extent that the charging party, Local 2928, filed a Motion to Withdraw. PERC had affirmed some, but not all, of the Summary Dismissal. The affirming of the Summary Dismissal was subject to an immediate appeal in the court system, so there was also an Appellate Court appeal that was withdrawn. The only thing that was now remaining was to have an approval of the Motion to Withdraw, PERC could make their decision on what was just explained, or could ask questions and/or read all of the back-up material. The Union has withdrawn the charge.

Attorney Kornreich added that the parties did negotiate to Collective Bargaining Agreements – they were multi-year collective bargaining agreements, so hopefully there would be no problems for several years. He added that very often in bargaining situations there was a certain amount of contention, which results in charges, and it was always hoped that when the contracts were settled those items of contentions would go away. In this case, there were some very complex issues, because the Town of Palm Beach had very unique processes and procedures; there were certain feelings that the Town Council and administration had – that they wanted to adhere to certain things. Some very complex compromises had to be worked out that were unique, and it took longer with the Town grievance procedures versus the contractual grievance procedure. Some of the items had to be dovetailed and worked out. The two contracts were finally ratified, and Attorney Mierzwa, on behalf of the Union, filed a Motion to Withdraw the Charge. Approval of that withdrawal of the unfair labor practice charge was now being requested today. There was no formal accepted settlement agreement; it was just the contracts themselves that were in place, and the unfair labor practices go away. He explained that the contracts had already been in place for over a year.

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Attorney Pheterson explained that one of the things that had contributed to the delay was that the Commission had been short one member, and Mr. Graves had to then be appointed, and the meeting noticed. He noted that the ordinance of the Town was styled in the manner that the original Public Employees Relations Act had been styled, where there had to be one representative from labor, one representative from management, and one neutral.

Attorney Kornreich interjected that there were only four or five municipalities in Florida that had mini-PERC's at this point; most municipalities did not have the infrastructure to maintain a mini-PERC.

Mr. Flamm moved to approve the Motion to Withdraw the unfair labor practice charge [PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF PALM BEACH COUNTY, LOCAL 2928, IAFF, Inc., Charging Party, v. THE TOWN OF PALM BEACH, Respondent, Case Number CA-04-001]. The motion was seconded by Mr. Graves. The motion carried unanimously.

Mr. Kornreich remarked that Attorney Mierzwa had basically agreed to the withdrawal. He explained that the Town had some very unique ideas as to how grievances should be processed – which kinds of grievances should go to arbitration, and which should first go through the Town internal process. He explained that in the private sector, all of it would go to the arbitrator.

4. Report of the General Counsel.
 - A. Overview of the role of the mini-PERC, and recent developments.
 - B. Union registration requirements.
 - C. Overview of employee organizational rights.
 - D. Representation-Certification Petitions.
 - (1) Determination of appropriate bargaining units.
 - (2) Impartial election process.
 - E. Unfair labor practices.

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F. Collective bargaining impasse and the Special Master process.

5. Questions from the Commission Members.

Attorney Pheterson clarified that the mini-PERC was a commission of limited jurisdiction, a limited mandate, and sometimes people in the community think of the members as ombudsmen, and may try to contact them in regard to an employee. The appropriate response of a member would be to explain that they were only here as a Commission to respond in the Sunshine; that the meeting was duly noticed and recorded, and that the Commission could only respond to petitions filed formally with the Town Clerk.

Attorney Pheterson explained that all unions that wish to represent any employees of the Town of Palm Beach would need to register with the Town Clerk's office. Local 2928 had already been registered with the state PERC and the Town had simply accepted copies of documents that were already in place in Tallahassee. Employees had the same organizational rights in the Town under its ordinance, as they would have with the state PERC – the right to form and join together for common representation, either through a formal union, or just through an informal group of employees. They also had the right not to join or form a union as well. Some unfair labor practice cases would be focused just on that right, separate from the more formal unionization issues. It was possible that a case like that could come before the Town's mini-PERC, however, in the past ten years there had been the union organizational efforts, and the representation case for the firefighters. There were now two contracts, because there were two bargaining units – one for the rank and file, and one for supervisors, both represented by the same union.

In response to questions of the Commission, Human Resources Director William Crouse commented that there were 400 full-time employees in the Town of Palm Beach – the Public Works Department had approximately 100 employees; the Police Department approximately 130; Fire-Rescue approximately 80; the rest of the employees were in the Planning, Building & Zoning, Recreation, Finance, etc. Typically, in the public sector, there were Police and Fire unions, and a blue collar union representing public works type employees. In the past twenty-eight years, since he had been an employee, Mr. Crouse explained that this was the first union to come along. Prior to 1977, the Fire-Rescue Department had unionized, and the union had actually de-certified within one year.

Attorney Pheterson noted that the elections were run by the state PERC election staff, who had been generous in providing local agencies with their election staff. They were very objective, knew the rules, and were very good at defusing potential volatile situations. The Town of Palm Beach mini-PERC ordinance was passed in 1976. He noted that in 1967 there had been a statewide teachers strike, which was extremely disruptive, and the Constitution of the

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State of Florida had been revised to prohibit public employee strikes shortly after that. The compromise was that even though they cannot strike, they had to be given the right to organize and a certain right to bargain and a process for dealing with the resolution of impasses that occur, as well as a final process to get a contract, or to get some kind of terms and conditions that would move forward. The concerns of the taxpayers are also balanced, through the elected officials. In this case, there is not binding arbitration to resolve a collective bargaining issue by having a third party come in, and order a pay raise, which would then end up costing the taxpayer.

Attorney Pheterson further explained that the mini-PERC was one of the compromises at the time that the statewide PERC was created; local governmental entities were given the opportunity to create its own mini-PERC, where they could retain some local control, if they chose to do that.

Human Resource Director Crouse commented that the only time the mini-PERC versus statewide PERC had been debated was when George Frost was the Town Manager. Mr. Frost had originally implemented the mini-PERC, because there was a very short window of time to take it, or to lose the opportunity to take it. At that time, the administration and the elected officials felt very strongly that the PERC decisions should be kept within the Town.

Attorney Pheterson explained that the decisions regarding the dismissal of certain aspects of the charges went from the mini-PERC to the Fourth District Court of Appeal, which is the court just below the Florida Supreme Court. The mini-PERC is totally autonomous in the system, and as far as the court is concerned, it is on the same level as the statewide PERC.

Mr. Crouse explained that the Town ordinance must follow suit with the state, and as the state makes changes, the Town needs to make similar changes.

Chair Hoffman commented that a Special Master, under the Florida law, could only recommend. The Town Council then would become the governing body as to whether they would accept or reject the Special Master recommendations, which keeps everything very local.

Attorney Pheterson commented that the actual list of Special Masters comes from the state.

Attorney Pheterson reminded all that there was a meeting at 2:00 p.m. today on the Sunshine Law and Public Records Act for anyone to attend. He noted that members of the mini-PERC should be somewhat wary about talking to members of the public about things that come before them, and that they should also be aware that they should not talk between themselves about mini-PERC matters outside of a public meeting.

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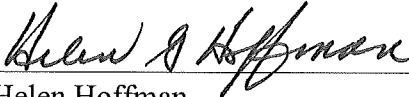
In response to Chair Hoffman, Attorney Kornreich explained that disciplinary grievances would not even go to arbitration; they would go through the Town's internal processes, which have a cause standard.

Attorney Pheterson advised that with the motion to approval withdrawal of the charge, he would prepare an order, send it to all of the mini-PERC members by e-mail, and he would respond to any questions. He would then send it to Town Clerk Eichhorn, who would sign it on behalf of the Commission and would issue the order approving the withdrawal of the charge.

In response to Mr. Flamm as to what would technically happen if this meeting had not been held, Attorney Kornreich explained that there was a long-standing agreement between the Town and the union that says upon the ratification of collective bargaining agreements, the union will file a motion to withdraw the charges.

6. Adjournment.

There being no further business, the Public Employees Relations Commission meeting of May 17, 2006, was adjourned at 1:40 p.m.


Helen Hoffman
Chair

Prepared by:
Susan Eichhorn
Town Clerk, Town of Palm Beach