

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF SEPTEMBER 10, 2009

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JEFFREY K. BARTON

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September 10, 2009

SPECIAL CALL MEETING OF THE INDIAN RIVER COUNTY

BOARD OF COUNTY COMMISSIONERS

RESOLUTION OF IMPASSE ISSUES BETWEEN SHERIFF'S

OFFICE AND COASTAL FLORIDA POLICE BENEVOLENT

ASSOCIATION

SEPTEMBER 10, 2009

The Board of County Commissioners of Indian River County, Florida, met in a Special Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Thursday, September 10, 2009, to resolve a Bargaining Impasse between the Indian River County Sheriff's Office and the Coastal Florida Police Benevolent Association (CFPBA). Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, Commissioners Peter D. O'Bryan, Bob Solari, and Gary C. Wheeler. Also present were Assistant County Administrator Michael Zito, Senior Assistant County Attorney Marian Fell, and Deputy Clerk Maureen Gelfo.

Also present was Court Reporter Sharon Northrup, Indian River Court Reporting, representing James Harpring, General Counsel for the Sheriff's Office.

1. CALL TO ORDER

Chairman Wesley S. Davis called the meeting to order at 2:00 p.m.

2. INVOCATION

Commissioner Wesley S. Davis, Chairman, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

**4. BRIEF OVERVIEW AND INTRODUCTION OF THE MATTER:
COUNTY ATTORNEY**

Senior Assistant County Attorney Marian Fell announced that the Board of County Commissioners would conduct a quasi-judicial public hearing, after which it would make a final and binding decision on three Articles in a Collective Bargaining Agreement that have been declared at bargaining impasse by the Coastal Florida Police Benevolent Association (CFPBA) and the Indian River County Sheriff's Office, as follows: (1) Article 17: Wages; (2) Article 19: Basic Workweek and Overtime; and (3) Article 23: Uniforms and Equipment. Attorney Fell said that the Board's decision would be effective from October 1, 2009 through September 30, 2010. She explained that although the insulated period (the prohibition on direct advocacy or direct lobbying of the legislative body), would be lifted during the meeting, it would resume during breaks. Attorney Fell said that law enforcement personnel are exempt from the requirement to provide an address; thus, the Chairman would not be requiring that information from any speaker.

Commissioners Davis, Flescher, O'Bryan, Solari, and Wheeler each disclosed that prior to, BUT NOT FOLLOWING, the insulated period, communications had occurred with one or

more of the following individuals: the Sheriff; the Sheriff's attorney, James Harpring; several Deputies; Union Representatives; and the Public regarding this matter.

5. ADOPTION OF PROCEDURES FOR ALL ARTICLES AT IMPASSE

The Chairman outlined the proposed procedures for this meeting.

Commissioner Solari conveyed his reluctance to make a decision on the Articles at Impasse, citing the lack of background information.

Commissioner O'Bryan asked if the Chairman could use his discretion on the time limit for each presenter, rather than hold each party to the 10 minutes stipulated in the procedures.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Wheeler, to adopt the
Procedures for all Articles at Impasse, with the exception
of the presentation time, which shall be left to the
Chairman's discretion.

James G. Harpring, General Counsel for the Sheriff's Office, requested that the Commissioners allow a brief period of rebuttal by each party.

Stephen J. Valis, Principal of Systems and Management, LLC, and Chief Negotiator for the Coastal Florida Police Benevolent Society (CFPBA), said that the wage negotiations could not be for October 2009 to September 2010, as stated by Attorney Fell, because an impasse hearing cannot be held in a current fiscal year for the next fiscal year.

Attorney Harpring clarified that the discussion on Article 17: Wages, pertains to a lump sum allocation, to be determined and issued prior to the end of the current fiscal year, 2008/2009, and does not pertain to Fiscal Year 2009/2010 wages.

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Solari, to approve the Procedures for all Articles at Impasse, with the following amendments: (1) waive any time limits for the speakers and leave it to the Chairman's discretion to control the discussion; and (2) allow each party a brief rebuttal period subsequent to Public Comments.

As there was no further discussion in the procedures for the meeting, the following action was taken:

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

Attorney Fell conveyed that this was the first time County staff had heard about any date issue. An extensive debate and discussion followed, as Commissioners, staff, Attorney Harpring, and Mr. Valis, sought to clarify whether today's hearing was relative to Fiscal Year 2008/2009 (October 1, 2008 through September 30, 2009), or to Fiscal Year 2009/2010 (October 1, 2009 through September 30, 2010).

The Chairman called a break at 2:34 p.m. for the purpose of having the Sheriff and the Coastal Florida Police Benevolent Association (CFPBA) determine the dates which are in question, under Article 17: Wages. The meeting was reconvened at 2:50 p.m, with all members present.

Attorney Harpring disclosed that Article 17: Wages pertains to the Sheriff's issuance of a one-time lump sum payment to the Deputies, in an amount to be determined prior to the end of the 2009 fiscal year, dispensed from any funds relative to the 2008/2009 Fiscal Year, that the Commission approves for that lump sum payment.

County Administrator Joseph Baird questioned how much the lump sum payment would be, and wanted to know whether it was to be drawn on money already given to the Sheriff, or whether the money would have to be found.

Attorney Harpring responded that **Harry Hall**, the Sheriff's Comptroller, has indicated to him that the amount will be based upon what happens with the budget in the next few weeks. He stressed that the Sheriff's office was not seeking an additional allocation of funds; the lump sum payment would come from the funds which have already been allocated for the 2008/2009 Fiscal Year budget.

Attorney Harpring and **Mr. Valis** thereafter confirmed for the Commissioners and Attorney Fell that the Sheriff and the CFPBA have agreed that today's hearing on Article 17: Wages would apply to Fiscal Year 2008/2009.

Commissioner O'Bryan then wanted to know what fiscal year would apply for the remaining two Articles at impasse, Article 19: Basic Workweek and Overtime; and Article 23: Uniforms and Equipment.

Mr. Valis conveyed that the only date disputed had been for Article 17: Wages.

(Clerk's Note: At this time, the Deputy Clerk administered the Oath to any individual who would be speaking at today's hearing).

Attorney James G. Harpring - Opening Statement

Attorney Harpring said that a reorganization of the work schedule from a 12-hour shift had originally been proposed by former Sheriff Roy Raymond, who in 2008, decided to allow the incoming Sheriff to decide what would be the desired shift configuration; that is the reason for the mandatory re-openers in the Collective Bargaining Agreement. Attorney Harpring declared that regardless of the Articles to be discussed today, the real issue is the Sheriff's authority to efficiently manage the internal day-to-day operations of his office. Attorney Harpring asked the Board to keep in mind that said operations are a function that belong uniquely to the Sheriff as the Chief Law Enforcement Officer, and quoting from *Chapter 30, Section 30.079*, he set forth the Sheriff's authority to "...to exercise control and discretion over the organization and operations of the Sheriff's Office..."

Attorney Harpring responded to questions from the Commissioners regarding the background of the proposed shift changes, the mandatory re-openers, and Chapter 30 of the Florida Statutes.

Stephen J. Valis - Opening Statement

Mr. Valis informed Commissioners that the negotiation process goes back to December 2006. He said that Sheriff Raymond's desire to change the shift schedules was never formally pursued to the Union because of the Deputies' objections. Relative to Chapter 30, Section 30.079, regarding the Sheriff's authority, he said that contracts by their nature limit that authority. He remarked that where there is no union, the Sheriff can pretty much do what he wants if it is within the law; once you have Collective Bargaining, there is another party to deal with. He hoped that the Commissioners would keep in mind, as they listened to the arguments

on wages and on the shift changes, that the reason for unions is because of a series of unpopular past actions.

6. ARTICLES AT IMPASSE:

Article 17: Wages

“The Sheriff in his sole discretion and subject to budgetary constraints may issue a one time, lump sum payment in an amount to be determined prior to the end of the 2009 Fiscal Year.”

A. Sheriff Presentation

Attorney Harpring felt that because Article 17: Wages would benefit the employees, he did not think the Union would oppose its ratification by the Commission; however, he reiterated his stance that the issue pertains to the Sheriff’s ability to effectively manage the internal operations of the Agency.

Commissioner Wheeler sought and received confirmation from Attorney Harpring that the Sheriff is giving up the authority to determine the lump sum payment, which amount is going to be determined by the Board.

Commissioners Wheeler and O’Bryan discussed with Attorney Harpring the importance of including Capital Items and of having transparency in the Sheriff’s Budget.

B. Union Presentation

Mr. Valis reviewed a handout of negotiation timelines, which he provided to the Commissioners (copy on file). He reported that on December 13, 2007, Systems and Management, LLC began representing the Coastal Florida PBA, and on August 6, 2009, the Sheriff offered a final proposal: (1) an increase of \$10.00 in the Shoe Allowance, bringing it to

\$75; (2) a shift change from 12 to 10 hours; and (3) providing to the Deputies a lump sum payment at the Sheriff's sole discretion. Mr. Valis discussed his concerns over good-faith bargaining, and objected to the Sheriff's proposal to give employees an undefined amount for the lump sum payment.

Assistant County Administrator Michael Zito said this debate presumes that there is a surplus of money that is either going to be exercised by the Sheriff at his sole discretion to distribute to the employees of the Union, or returned to the County Commission, pursuant to Chapter 30, Section 30.0(6). He declared that it was appropriate to ask whether those funds exist within this year's fiscal budget.

Attorney Harpring said that the Sheriff's Comptroller, Harry Hall, could not be in attendance today; however, he had been informed by Mr. Hall that the cumulative amount available could not be determined until the "11th Hour", at the end of the fiscal year.

An extended discussion ensued, with Attorney Harpring responding to further questioning regarding the projected figure for the lump sum payment. Attorney Harpring hoped that the amount would be analogous to the bonus amount which was given last year, \$602,000.

Commissioners expressed an unwillingness and inability to make a determination without knowing what funds are available.

Mr. Valis conveyed that the \$602,000 in bonuses given last year had been a cumulative amount granted to all of the Sheriff's full and part-time employees, whereas the CFPBA was negotiating only on behalf of the 150 Union employees. He later noted this was the first time he was hearing about the \$602,000 figure.

Commissioner Solari reiterated that the Commission could not make a decision about an unknown sum of money, and wondered whether the resolution of Article 17: Wages should be postponed for a month, until the financial data is provided.

Chairman Davis pointed out that at the end of the fiscal year, all that money goes back into the General Fund, so any checks issued would need to be cut by September 30, 2009.

Commissioners Davis, Wheeler, and O'Bryan voiced support for giving a bonus department-wide, not just to the Union members. Commissioner O'Bryan proposed making an allocation to all the Sheriff's employees after any surplus funds are returned to the Commission.

Commissioner Wheeler explained why it was possible that no monies would be returned to the County; he was not opposed to tabling this item until the required information is available from Comptroller Hall.

Commissioner Solari suggested Mr. Hall come in towards the end of September 2009, and disclose, with a high probability, how much money will remain in the Sheriff's budget.

Attorney Fell advised that if no decision is made today on Article 17: Wages, or on any other Article, the insulated period would be reimposed, and the Board would need to hold another Public Hearing.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan, to reconvene the
Public Hearing to a time certain of Thursday, September
17, 2009 at 2:00 p.m., to obtain the required financial
information from the Sheriff's Comptroller, Harry Hall,
for the purpose of resolving Article 17: Wages.

Commissioner Solari sought and received confirmation from Attorney Harpring that Mr. Hall would be present at the rescheduled meeting.

Attorney Fell sought and received confirmation that the continuation of the Public Hearing would be only for Article 17: Wages.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously.

The Chairman called a break at 4:12 p.m. and reconvened the meeting at 4:24 p.m., with all members present.

Vice Chairman Flescher deemed that there was insufficient information available to continue discussion on the other Articles at impasse, Article 19: Basic Workweek and Overtime and Article 23: Uniforms and Equipment, and suggested postponing the Public Hearing for one week so that the Sheriff and the Union could provide briefs containing the financial and other pertinent information.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Solari, for discussion, to have briefs prepared by both the Sheriff and the Coastal Florida Police Benevolent Association, and to reconvene at a time designated next week, within seven (7) days, for the purpose of finalizing the Board's resolution of the three Articles at Impasse.

Commissioner Solari sought and received confirmation that the Motion included or expected a pro forma 12-month of the Sheriff's Budget.

Commissioner Wheeler wanted to proceed with Article 23: Uniforms and Equipment, and if time permits, with Article 19: Basic Workweek and Overtime, out of respect for those individuals who showed up at today's hearing.

C. Sheriff Rebuttal-NONE

D. Union Rebuttal-NONE

E. Public Input

The following speakers urged the Board to continue with the hearing on Article 19: Basic Workweek and Overtime and on Article 23: Uniforms and Equipment:

Phil Craig, Retired Deputy

Lisa Bailey, Deputy's spouse

Ron Bayer, CFPBA member

Dr. Allen Prada, Citizen

Addition: E.I. Board Decision on Rescheduling the Hearing on all the Articles at Impasse

The CHAIRMAN CALLED THE QUESTION, and by a 1-4 vote (Commissioners Davis, O'Bryan, Solari and Wheeler opposed), the Motion to reschedule too next week the Hearing on all three Articles at Impasse DIED.

F. Board Deliberation
See above discussions.

G. Board Decision Article 17

Chairman Davis informed Commissioners that the Commission Chamber was unavailable on Thursday, September 24, 2009. All parties agreed to reschedule the Public Hearing regarding Article 17: Wages to Monday, September 14, 2009, at 9:00 a.m. in the Chamber.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved reconvening the Public Hearing to a time certain of Monday, September 14, 2009 at 9:00 a.m., to obtain the required financial information from the Sheriff's Comptroller, Harry Hall, for the purpose of resolving Article 17: Wages.

Article 19: Basic Workweek and Overtime

A. Sheriff Presentation

Attorney Harpring stated that Article 19 provided for 10-hour shift rotations of *Wednesday, Thursday, Friday, and Saturday or Sunday, Monday, Tuesday, and Wednesday*. The shifts would affect almost 1/8 of the staff and would be configured in an overlapping manner to provide for increased coverage during the peak calls for service. Attorney Harpring read e-mails from several Criminal Investigations Department detectives who had voted to change to a 10-hour shift. He spoke to the cost-savings advantages of the 10-hour shifts, which included

having infraction court and training sessions on Wednesdays (the common day for both shifts, but he noted that it is impossible to quantify better public service in dollar amounts. He reiterated that Article 19 reflects the Sheriff's desire and need to effectively manage the Agency, which the Sheriff believes can be done by changing to the proposed shifts. Concluding, Attorney Harpring declared that it is essential that the Commission preserves for the Sheriff, the ability to manage the Agency in this regard.

B. Union Presentation

Mr. Valis reported that various clerical, administrative, and jail personnel, and 100% of the Road Patrol deputies would be affected by the shift rotations. He disclosed that the Shift Committee, an ad-hoc committee headed by the Sheriff's Planner, Kim Poole, had reviewed various shift options, and recommended maintaining the current 12-hour shift schedule, due to the minimum staffing on the road at this time. Mr. Valis said that the proposed shift rotations would require additional hires, and would leave certain zones, particularly beachside, unstaffed. Mr. Valis stated that the Sheriff's employees would be impacted negatively by the shift change because they would have to coordinate such matters as day care and off-duty part-time jobs with a rotating schedule, and they would be required to work 26 more days of work per year at no additional compensation. In summary, Mr. Valis stated that the proposal had twice been rejected by the Deputies, it was rejected by the Shift Committee, it requires more deputies and more money, and it would leave some zones unstaffed. He thereafter presented the Deputies' proposal... "if it ain't broke, don't fix it..."

C. Sheriff Rebuttal

Attorney Harpring refuted Mr. Valis's allegation that the employees would be working more hours for less money, and the suggestion that at any time of day, a zone would be left uncovered.

Commissioner Solari asked Attorney Harpring if he felt that the shift change was revenue neutral.

Attorney Harping responded that he saw an economic benefit in the long-term, with expected reductions in overtime due to having infractions court and training on Wednesdays (the common day to the shift schedules).

D. Union Rebuttal

Mr. Valis emphasized that at no time did he say that the Deputies would be working more hours; he said they would be working 26 more days.

E. Public Input

Lisa Bailey, a Deputy's wife, described how the proposed shift schedule would negatively impact her family emotionally and financially. She asked the Commissioners to look at all the facts, including the impact on the Deputies' families and the morale of the Agency.

Katherine Gibson, Deputy Sheriff, read a personal statement and quoted from the May/June 2009 issue of the *National Academy Association Periodical*, to present arguments opposing implementation of a 10-hour rotating shift schedule, and supporting retention of the 12-hour shift, as currently implemented. She declared that the Deputies are happy with the current schedules, discussed the hardships which would occur as a result of the proposed schedule rotations, and implored Commissioners to retain the current shifts.

Mr. Craig disputed Attorney Harping's earlier point that the infractions courts could be rescheduled to Wednesdays to effect overtime reductions. He discussed salary issues,

expressed disappointment with the negotiations between the Sheriff's Agency and the Union, and asked the Board to retain the 12-hour schedule.

An unidentified Deputy discussed the adverse impacts, including economic hardships, which he felt would occur to the Deputies and their families, with the proposed shift changes. He noted that the Deputies were not making huge demands -- only asking to retain their current shifts, and urged the Board to protect the Deputies, their homes, and their families.

Vince Champion, President of the Coastal Florida Police Benevolent Association, spoke of the integrity of the Deputies, who continue to do their jobs and serve the citizens without complaint. He stressed that they were not asking for pay raises or for anything other than to keep their current schedule, and he asked the Board to allow them to do so.

Dr. Prada read a statement outlining his concerns regarding what he opined was the lack of adequate Road Patrol presence on the Beach, and how that would be further impacted by the schedule change. He then conveyed his respect for the Deputies, and discussed the lack of step increases in their pay structure.

Addition: E.1. Sheriff Rebuttal

Attorney Harpring stressed that today's hearing is a result of a difference of opinion by two reasonable parties on two (2) out of thirty-eight (38) Articles (he did not think Article 23 [the Shoe allowance] was a matter for dispute). He remarked that the rotation in the Deputies' schedules was not out of the ordinary, conveyed that there would be adequate personnel to cover the 10-hour shift, and established that coverage on the Barrier Island was not an issue from a personnel standpoint. He reiterated that the issue before the Commission relates to the effective management of the Sheriff's Agency by the Chief Law Enforcement Officer of the County, the

Sheriff. He felt that to ultimately supplant the Sheriff's independence, and the independence of the Office of the Sheriff in terms of a management issue, is inappropriate, and harms the Sheriff's integrity.

Addition: E.1. Union Rebuttal

Mr. Valis asserted that the issue before the Board was not necessarily a management issue; the law requires collective bargaining for hours of work and wages, among other things. He said that the Commissioners were not being asked what is the most desirable in terms of managing the Sheriff's office – it is being asked to review the facts and testimony, and come up with something fair for the Sheriff's Deputies.

Attorney Harpring thereafter responded to questions and comments from the Commissioners regarding staffing; the scheduling of training sessions; why the Sheriff requires rotation of the Deputies' schedules; whether there would be unprotected zones at any time of the day; the effects of the COPS Grant on staffing; the possibility of the Deputies utilizing shift exchanges; and the additional 26 days the Deputies would be required to work under the new schedule.

F. Board Deliberation

Commissioner Wheeler believed that the Sheriff has the right and responsibility to manage his office, and to decide whether a particular shift is the right thing to do. He acknowledged that creating more coverage during peak call times with the 10-hour shifts is important, but felt that happy employees make more productive employees. He discussed the economic hardships being faced by the Deputies and other individuals in today's economy, and while he wished the Union and the Sheriff had been able to resolve this matter, he would support the Union's position to sustain the 12-hour shifts.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, for discussion, to support the Coastal Florida Police Benevolent Association's position of retaining the current twelve-hour shifts for the Deputies.

Vice Chairman Flescher wanted to do what was fair and honest, and the best value for the citizens and for the Sheriff's office. He declared that it is a very burdening time for all of our citizens, but specifically challenging for Law Enforcement personnel; it is a matter of quality of life, not luxury, as many citizens, as well as Deputies, are living in survival mode.

Chairman Davis acknowledged the painful and moving testimonies of Deputy Gibson and Mrs. Bailey. He declared, however, that having no law enforcement background, he did not feel qualified to answer the question as to which shift was right or wrong, and the stress that it will put on the family. Accordingly, he would give the Sheriff the opportunity to manage the Agency the way he sees fit, on the basis that he won the race – he will either need to “fix it or not get re-elected.”

Commissioner Solari voiced his reluctance to make such an important decision, with what he felt had been inadequate information. He would not support the Motion, because he shared Chairman Davis's opinion that it is the right and responsibility of the Sheriff to run the Agency, as an independent Constitutional Officer. He added that if the Sheriff does not successfully do so, the citizens will vote him out in four years.

Commissioner O'Bryan recalled that on September 9, 2009, the Board had given the County Attorney the authority to make his own management decisions for the Legal Department;

consistent with that action, he believed that the Board should set policy and not meddle in individual decisions. He agreed with Chairman Davis that the Sheriff was elected to perform a job at which he deserves to either fail or succeed based on his own, and not the Board's, decisions. However, he was concerned about the financial stress and impacts on family life as discussed by the Deputies. He therefore would support the Sheriff's position as manager of the Agency, but should the current Motion fail, he would offer another Motion to tie the shift change into a bargaining step increase program.

G. Board Decision Article 19

The Chairman CALLED THE QUESTION, and by a 2-3 vote (Commissioners Davis, O'Bryan and Solari opposed), the Motion DIED to retain the current twelve-hour shifts for the Deputies.

MOTION WAS MADE by Commissioner O'Bryan, to approve the 10-hour shift change, with the caveat that it not take effect until the Sheriff and the Union have bargained to implement a step increase program for the Deputies. MOTION FAILED FOR LACK OF A SECOND.

ON MOTION by Commissioner Solari, SECONDED by Chairman Davis, the Board, by a 3-2 vote (Commissioners Flescher and Wheeler opposed) approved the Sheriff's position on Article 19: Basic Workweek and Overtime, as reflected in Appendix B of the Collective Bargaining

Agreement, including amending the hours of work from the current 12-hour shifts to 10-hour shifts.

(Clerk's Note: Appendix B was not made available to the Deputy Clerk)

Article 23: Uniforms and Equipment

(no backup)

A. Sheriff Presentation

Attorney Harpring said that \$4,000 would cover the \$10.00 increase to the current \$65.00 Shoe Allowance for the entire Agency, and at approximately 150 Union members, the cost would be the equivalent amount.

B. Union Presentation – None.

C. Sheriff Rebuttal – None.

D. Union Rebuttal – None.

E. Public Input – None.

F. Board Deliberation – None.

G. Board Decision Article 23

ON MOTION by Commissioner O'Bryan, SECONDED
by Vice Chairman Flescher, the Board unanimously

approved Article 23: Uniforms and Equipment, increasing by \$10.00 the Shoe Allowance from \$65.00 to \$75.00.

Attorney Fell summarized that Article 17 was effectively being Tabled, and that the Board would reconvene at a Public Hearing on Monday, September 14, 2009, at 9:00 a.m. for the purpose of its resolution. She announced that the insulating period would be reimposed immediately after the meeting's conclusion, and lifted on September 14, 2009 at 9:00 a.m.

7. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 6:31 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Special Call Impasse