

JEFFREY K. BARTON
Clerk to the Board



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MEETING
OF BOARD OF COUNTY COMMISSIONERS
OF SEPTEMBER 14, 2009

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JEFFREY K. BARTON

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September 14, 2009

**CONTINUATION OF SPECIAL CALL MEETING OF THE INDIAN
RIVER COUNTY BOARD OF COUNTY COMMISSIONERS
RESOLUTION OF IMPASSE ISSUE ON ARTICLE 17 BETWEEN
SHERIFF'S OFFICE AND COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION**

SEPTEMBER 14, 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 Monday, September 14, 2009, to resume its resolution of a bargaining impasse between the Sheriff's Office and the Coastal Florida Police Benevolent Association, specifically regarding *Article 17: Wages*. 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 Gail Watson, Indian River Court Reporting, representing James Harpring, Sheriff's General Counsel.

(Clerk's Note: This meeting is a continuation of the Special Session of Thursday, September 10, 2009, wherein the Board approved deferring action on Article 17: Wages until further information could be presented.)

1. CALL TO ORDER

Chairman Wesley S. Davis called the meeting to order at 9:00 a.m.

2. INVOCATION

Chairman Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Bob Solari led the Pledge of Allegiance to the Flag.

4. BRIEF INTRODUCTION: COUNTY ATTORNEY

Senior Assistant County Attorney Marian Fell announced that today's meeting is a continuation of the Special Session held on Thursday, September 10, 2009, for the purpose of resolving a bargaining impasse between the Sheriff's Office and the Coastal Florida Police Benevolent Association, regarding Article 17: Wages. She announced that the insulated period which had been reimposed at the end of that meeting was now being lifted. Attorney Fell requested that the Board take Article 17: Wages off the table, fairly consider the positions of both parties, and as set forth in Florida Statutes, Section 447.403(4)(d), take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve this disputed impasse issue.

5. PROCEDURES FOR ALL ARTICLES AT IMPASSE

Attorney Fell announced that the Procedures would be as adopted at the Special Meeting of September 10, 2009.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously removed Article 17: Wages from the Table.

Chairman Davis recapped that the Commissioners had been unable to resolve this particular issue at impasse, Article 17: Wages, at the September 10, 2009 meeting, due to the lack of sufficient information on the amount and availability of funds for the one time, lump sum payment which the Sheriff proposed to grant the Deputies at the conclusion of Fiscal Year 2009.

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

James G. Harpring, General Counsel for the Sheriff’s Office, reported that the Sheriff was contemplating a payment of a one time stimulus, or lump sum payment, in the amount of a gross payment of \$1,582.86 per employee, which would net the employees approximately \$1,000 after deductions for taxes and the Florida Retirement System (FRS). Attorney Harpring believed the Union concurred with that figure.

Chairman Davis conveyed his desire to accomplish the payment, if possible, by having a Memorandum of Understanding between the Sheriff and the Union.

Attorney Harpring explained that whatever language the Board of County Commissioners, acting as a quasi-judicial body, gives to the parties, is going to be memorialized into a document which will be executed by Union representatives and the Sheriff's office, and which will become part and parcel of the Collective Bargaining Agreement. It will reflect the Board's decisions on all three Articles; and is binding on both parties.

(Clerk's Note: See Special Meeting of September 10, 2009 for Board Resolutions of Article 19: Basic Workweek and Overtime and Article 23: Uniforms and Equipment).

Responding to Commissioner Wheeler's question, Attorney Harpring conveyed that the lump sum payment was being contemplated for the Collective Bargaining Unit members, all full-time sworn and non-sworn employees, and a reduced payment (similar to last year's) was being considered for paid part-time employees.

Vice Chairman Flescher wanted to know approximately how many employees would be eligible for the payment, and Attorney Harpring disclosed that the number of eligible employees was in the upper 400's.

To Vice Chairman Flescher's query on whether the exempt-status employees and the Sheriff and his command staff were eligible for the payment, Attorney Harpring responded in the negative.

Attorney Harpring confirmed for Commissioner Solari that based on his (Attorney Harpring's) analysis, the full amount proposed to be paid to all of the Sheriff's employees is available in the Sheriff's 2008-2009 Fiscal Year budget.

Commissioner O'Bryan learned from Attorney Harpring that an estimated \$747,000 was the total cumulative dollar amount for all the eligible employees, and that reserves remained in the Sheriff's budget for capital equipment, from funds previously requested and granted to the Sheriff for that purpose.

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

B. Union Presentation

Stephen J. Valis, Principal of *Systems and Management, LLC*, and Chief Negotiator for the Coastal Florida Police Benevolent Society (CFPBA), noted that although the Union is not happy about the shift changes approved on September 10, 2009, the economic settlement pertaining to Fiscal Year 2008/2009 is acceptable. However, Mr. Valis wanted it to be crystal clear, that the resolution of Article 17: Wages only addresses the current fiscal year, and that the parties shall continue to negotiate any wage considerations for the fiscal year commencing October 1, 2009. He also requested confirmation on whether the wages, which are not part of the base pay, would be subject to FRS deductions.

C. Sheriff Rebuttal - None

D. Union Rebuttal – None

E. Public Input – None

E.1. Rebuttal by Either Party unless Waived by a Party – None

F. Board Deliberation

*(Clerk's Note: This discussion occurred immediately following **B. Union Presentation** and is placed here for continuity).*

Administrator Baird believed that most bonuses do not have to be included in staff's FRS compensation, but pointed out that the Sheriff's office will be handling this matter.

Comptroller Harry Hall, Sheriff's Office, presented his understanding that FRS payment is required if the payment is for future incentive and not a bonus, but if it is determined to be a lump sum bonus, it would be exempt from the FRS payment.

Chairman Davis was comfortable either way, as long as the dollar amount did not exceed the \$1,582.86, and asked whether either side had a preference.

Mr. Valis preferred that the FRS payment not be included, if possible, to increase the net amount of money from the approved sum.

Vice Chairman Flescher asked for the exact dollar amount on the disbursement for each employee.

Comptroller Hall explained that the figure of \$1,582.86 had been grossed up, so that the employees would get a net check of \$1,000 each.

Discussion continued, as Commissioners and Comptroller Hall considered whether the FRS contribution would need to be taken out of the \$1,582.86 payment.

Commissioner Wheeler preferred to not have the FRS deduction taken out of the payment, so that more disposable income would be available to the employees. He also remarked that it seemed a bit inequitable to give everyone the same bonus, as you might have civilian personnel making bottom scale, and a Deputy making upper scale.

Chairman Davis declared that before the checks are cut, he would like to obtain a letter from the appropriate authority regarding whether or not the FRS contributions needed to be made in this instance.

G. Board Decision Article 17

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Chairman Davis, to authorize the Sheriff to distribute post-haste, however he sees fit, a one time payment to the Sheriff's employees.

Under discussion, Commissioner Wheeler requested an amendment to the Motion, so the disbursement would not include payment to the FRS.

Vice Chairman Flescher was agreeable to amending his Motion pursuant to Commissioner Wheeler's request, but Chairman Davis wished to make sure the payment was exempt from FRS requirements.

Attorney Harpring requested that the Commissioners incorporate into their Motion a gross lump sum payment amount of \$1,582.86, for clarity of language, because the Agreement must reflect accurately the Board's decision, which will be legally binding. He affirmed that the Sheriff's Agency would exercise its discretion in articulating that payment as a lump sum payment and not as a payment for future services, thereby excluding it from the FRS requirement for contribution.

Chairman Davis sought and received confirmation that Attorney Harpring would be drafting the Agreement.

A brief discussion ensued among Commissioners and Attorney Harpring regarding whether the payment would be for Bargaining Unit Employees only, or for all Sheriff's employees across the board, and what the varying sums would be for different categories of Sheriff's employees.

Commissioner Solari clarified that today's vote would apply only to the Coastal Florida Police Benevolent Association members, and to the \$1,582.86 dollar amount previously provided.

Confirming Commissioner Solari's statement, Attorney Fell attested that, although custom and practice may have been to extend a payment to non-union employees, today's Agreement applies only to the Sheriff and the Bargaining Unit employees, and that the Commission does not have the ability to deal with the non-union employees at today's hearing.

Commissioner O'Bryan believed that the Sheriff understood that it was the Board's intention to grant the payment to all members of his Agency.

Chairman Davis remarked that the Board needs to return to the Motion for the gross payment of \$1,582.86.

Human Resources Director James Sexton cautioned the Board to include in the Agreement language stipulating that future raises and/or lump sum payments for future years would be subject to future collective bargaining, such that the dollar amount approved today does not set a status quo going forward.

Attorney Harpring affirmed that he would be drafting up the language to make it specific to the Board's decision today, only as it relates to Fiscal Year 2008/2009.

Chairman Davis clarified that the Motion was to grant the gross amount of \$1,582.86 to the Bargaining Unit employees.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board authorized the Sheriff to distribute post-haste, however he sees fit, a one time gross payment of \$1,582.86 to the Bargaining Unit employees.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, for discussion, to give to the Bargaining Unit Employees the gross one-time payment amount of \$1,582.86, with the necessary deductions but excluding the FRS contribution, if such action is permitted by law.

Attorney Harpring clarified that categorizing the bonus as a lump sum, as opposed to a payment for future services, would exclude it from the requirements of an FRS deduction, and affirmed that the law determines the deductions.

Comptroller Hall advised that he would verify the FRS requirements.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Chairman Davis and Commissioner Solari opposed), the Motion carried. The Board approved to give the Bargaining Unit Employees the gross one-time payment amount of \$1,582.86, with the necessary deductions but excluding the FRS contribution, if such action is permitted by law.

Chairman Davis confirmed that Attorney Harpring would draft and return to the Board with the written Agreement, as set forth below.

7. WRITTEN AGREEMENT

Pursuant to Florida Statutes Section 447.403(4)(e) the parties (Indian River County Sheriff's Office and Coastal Florida Police Benevolent Association) are to prepare a written agreement containing the disputed impasse issues resolved by the Board of County Commissioners.

8. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 9:31 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Special Call/Impasse