

LEGISLATIVE #

110596

SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** (sometimes referred to as the "Agreement") is entered into by and between the City of Gainesville, ("the City"), and Communications Workers of America, AFL-CIO, CLC; Florida Police Benevolent Association, Inc.; International Association of Fire Fighters, Local 2157, Gainesville Professional Firefighters, Inc.; and Gator Lodge 67, Inc., Fraternal Order of Police, (the "Unions").

WHEREAS, the City and the Unions desire to settle any and all disputes between them involving the unfair labor practice charges filed by the Unions with the Florida Public Employees Relations Commission against the City on January 6, 2009 (Case Nos. CA-2009-002, CA-2009-003, CA-2009-004, CA-2009-005).

NOW, THEREFORE, in consideration of the mutual promises and covenants exchanged and other good and valuable consideration as set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Unions and the City, intending to be legally bound, hereby acknowledge and agree to the following:

I. Definitions

For purposes of this Agreement, the following Definitions shall apply:

A. Effective Date. The "Effective Date" of this Agreement is the date this Agreement is approved by the City Commission.

B. Released Parties. The "Released Parties" are the City of Gainesville, its current and former elected or appointed officials, attorneys, representatives, agents, officers and employees, whether acting in their official, individual, or personal capacity.

C. Releasing Parties. The "Releasing Parties" are the Unions, their heirs, executors, administrators, representatives, attorneys, agents, and assigns.

II. Terms

A. Benefits. In consideration for the Unions' execution of this Agreement, and their release of the claims set forth below, the City will provide to the Unions the following benefits:

(1) The City shall implement the Order on Court Remand issued by the Florida Public Employees Relations Commission ("PERC") on August 23, 2011 and attached hereto as Attachment A within ninety (90) days of the Effective Date of this Agreement. In implementing this Order, the City shall not collect the overpayments made to any employees who are represented by the Unions and who have retired since the implementation of the changes in the formula for the City's contribution to retiree health insurance premiums the amount of premium that they would have paid but for the City's changes in that formula. The City shall implement paragraph 2(c) of PERC's Order by posting the Notice to employees for 60 days in conspicuous locations where notices to employees represented by the Unions are customarily posted including, but not limited to, such conspicuous locations at each of the City's fire and police stations; Gainesville Regional Utilities Operation Center located at 4747 N. Main Street; the "Compound" (including employee break rooms for the Public Works

Department and the Parks Department) located at 405 NW 39th Avenue; the Thomas Center; and the City Hall (including the employee break room in the basement). The City shall notify PERC of the posting and final compliance by affidavit as provided in paragraph 2(d) of PERC's Order.

(2) The City shall pay the Unions' appellate attorney fees and costs in the amount of \$32,047.50 within twenty-one (21) days of the Effective Date of this Agreement, by issuing a check to Donnelly & Gross, P.A.'s Trust Account.

(3) The City shall dismiss with prejudice its appeal of the Order on Court Remand issued by the Florida Public Employees Relations Commission on August 23, 2011 and currently pending before the First District Court of Appeal as Case Number 11-5078 within fourteen (14) days of the Effective Date of this Agreement.

(4) The City Attorney shall recommend that the City Commission approve of this Agreement at the January 5, 2012 City Commission Meeting.

(5) The City Manager shall read the letter of apology attached hereto as Attachment B to the members of the Unions at the January 5, 2012 City Commission Meeting relating to the City's unilateral change of the formula by which the City's contribution to the future retirement health insurance premiums of employees represented by the Unions in 2008, confirming the City's commitment to bargaining such changes with the Unions in the future, and expressing the City's sincere desire to put this matter behind it and work together with the Unions to address the many issues facing the employees and the City. If the City Commission approves this Agreement at the January 5, 2012 City Commission meeting, the letter of apology shall be read by the City Manager immediately thereafter under the City Attorney portion of the Regular Agenda of the City Commission.

B. Contingency. The benefits described in Section II (A) are contingent upon the following:

(1) The Unions shall execute this Agreement on or before January 5, 2012 and comply with all of the terms and conditions of this Agreement.

(2) The Unions shall dismiss with prejudice their appeal of the Order on Court Remand issued by the Florida Public Employees Relations Commission on August 23, 2011 and currently pending before the First District Court of Appeal as Case Number 11-5082 within fourteen (14) days of the Effective Date of this Agreement.

(3) The Unions shall dismiss with prejudice their appeal of the Order Denying Motion to Vacate issued by the Florida Public Employees Relations Commission on September 28, 2011 and currently pending before the First District Court of Appeal as Case Number 11-5860 within fourteen (14) days of the Effective Date of this Agreement.

(4) The Unions shall dismiss with prejudice Case Numbers AF-2011-006, AF-2011-007, AF-2011-008, and AF-2011-009 currently pending before the Florida Public Employees Relations Commission relating to the Unions' request for attorneys' fees in Case Numbers CA-2009-002, CA-2009-003, CA-2009-004, and CA-2009-005 within fourteen (14) days of the Effective Date of this Agreement.

C. Release. In exchange for the Benefits described in Section II (A) above, the Releasing Parties fully release and discharge the Released Parties from any and all claims, whether known or unknown, which the Releasing Parties may have arising from or in connection with facts and circumstances alleged in the unfair labor practice charges filed by the Unions with the Florida Public Employees Relations Commission against the City on January 6, 2009 (Case Nos. CA-2009-002, CA-2009-003, CA-2009-004, CA-2009-005).

D. Non-Admission of Liability. The Unions and the City agree that they have entered into this Agreement in compromise of disputed claims and that entry into this Agreement is not an admission of liability or wrongdoing on the part of the Released Parties or the Unions.

E. Entire Agreement; Modification. The parties agree that this is the entire agreement between the parties. This Agreement overrides and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about the subject matter of this Agreement. No modification of this Agreement shall be valid unless it is in writing identified as an Amendment to the Agreement and is signed by an authorized representative of the Unions and the City.

F. Governing Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be Alachua County, Florida.

G. Remedies for Breach.

(1) In the event that the Unions brings an action against the City based on any claims released in this Agreement, the City, may, at its option and as applicable (a) demand the return of any payments that have been made under this Agreement; (b) plead this Agreement in bar to any such action; and (c) seek any and all remedies available, including but not limited to injunctive relief and monetary damages, costs and reasonable attorneys' fees.


(2) In the event that City should breach this Agreement, the Unions shall be entitled to bring an action for breach of this Agreement. In the event that the Unions shall prevail in such an action to enforce the terms of this Agreement they will be entitled to recover as appropriate and applicable, monetary damages, injunctive relief, costs and reasonable attorneys' fees.

H. Severability. Each provision of this Agreement is intended to be fully severable. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable in any manner, the remainder of this Agreement will remain in force.

IN WITNESS WHEREOF, the parties sign this Agreement on the date indicated below with the intent to be bound by its terms and conditions. Executed in multiple counterparts, each of which when all are executed and delivered constitute a single contract, by the Parties as of the Effective Date:


UNIONS

CITY OF GAINESVILLE

By: 
Printed Name: Paul A. Donnelly
As their: Attorney
Date: 12/22/11

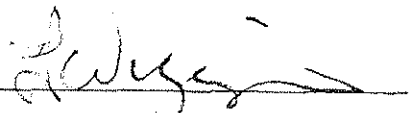
By: _____
Printed Name: Marion J. Radson
As its: City Attorney
Date: _____

Date Approved by the City Commission: _____

By: 
Printed Name: GERARD J. COUGHLIN

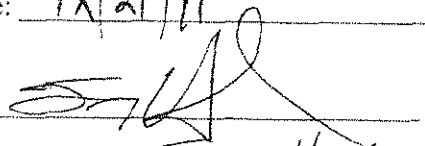
Union: Communications Workers of America, AFL-CIO, CLC

Date: 12/20/2011

By: 
Printed Name: Sam Wiggins

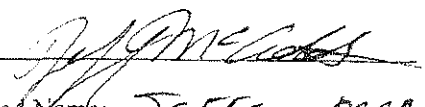
Union: Florida Police Benevolent Association, Inc.

Date: 12/21/11

By: 
Printed Name: Tracey Higdon

Union: International Association of Fire Fighters, Local 2157, Gainesville Prof. Fire Fighters, Inc.

Date: 12-22-11

By: 
Printed Name: JEFFERY McADAMS

Union: Gator Lodge 67, Inc., Fraternal Order of Police

Date: 12/21/11

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO, CLC;
FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC.; INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,
LOCAL 2157, GAINESVILLE
PROFESSIONAL FIREFIGHTERS,
INC.; and GATOR LODGE 67, INC.,
FRATERNAL ORDER OF POLICE,

Case Nos. CA-2009-002
CA-2009-003
CA-2009-004
CA-2009-005

ORDER ON COURT REMAND

Charging Parties,

v.

CITY OF GAINESVILLE,

Respondent.

Paul A. Donnelly, Laura A. Gross, and Jung Yoon Gainesville; David C. Miller, Miami;
and Theresa B. Proctor, Tallahassee, attorneys for charging parties.

Thomas M. Gonzalez, Tampa, attorney for respondent.

Pursuant to the order of the District Court, First District,¹ remanding this case to
the Commission, the Commission adopts the recommended remedy of the hearing
officer and orders the City to:

1. Cease and desist from:
 - (a) Unilaterally changing the formula by which the City's contribution to the future retirement health insurance premiums of employees represented by the Unions is calculated; and

¹Mandate issued on August 17, 2011.

Attachment A

CA-2009-002, CA-2009-003

CA-2009-004, CA-2009-005

- (b) In any like or related manner interfering with, restraining, or coercing its public employees in the exercise of rights guaranteed them by Chapter 447, Part II.

2. The City shall take the following affirmative action:

- (a) Rescind its changes to the formula by which the City's contribution to the future retirement health insurance premiums of employees represented by the Unions is calculated;
- (b) Pay to any employees who were represented by the Unions and who have retired since the implementation of the changes in the formula for the City's contribution to retiree health insurance premiums the amount of premium that they would not have paid but for the City's changes in that formula;
- (c) Post immediately for 60 days in conspicuous locations where notices to employees represented by the Unions are customarily posted, the attached Notice to Employees stating that the City shall cease and desist from the actions set forth in paragraph 1 above and that it shall take the affirmative action set forth in this paragraph. Copies of the Notice shall be signed by the City's authorized representative prior to posting. The City shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by other material; and
- (d) Notify the Commission by affidavit or other proof of the date of posting and final compliance with this order.

In addition, the Charging Parties shall have until September 26, 2011, within which to request a hearing on appellate attorney's fees and costs. Any such request must be accompanied by a detailed statement describing the services rendered.

CA-2009-002, CA-2009-003
CA-2009-004, CA-2009-005

This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes (2011), and the Florida Rules of Appellate Procedure.

It is so ordered.

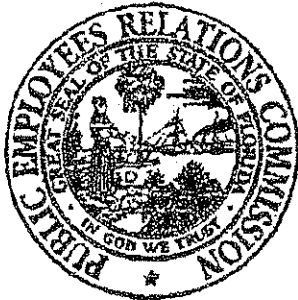
HOGAN, Chair, DELGADO and POOLE, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on August 23, 2011.

BY: Barrington

Clerk

/b/jk



January 5, 2011

Dear retirees and members of the Communications Workers of America, AFL-CIO, CLC;
Florida Police Benevolent Association, Inc.; International Association of Fire Fighters, Local
2157, Gainesville Professional Firefighters, Inc.; and Gator Lodge 67, Inc., Fraternal Order of
Police (the "Unions"):

The City of Gainesville regrets unilaterally changing the formula by which the City's contribution to the future retirement health insurance premiums of employees represented by the Unions in 2008. The City apologizes for any inconvenience and uncertainty this change caused you. When the City made these changes, it was doing so to ensure the future financial sustainability of the retiree health insurance program and believed it was acting within the confines of the law. The City now understands under the decision of the appellate court that this change should have first been bargained with the Unions before it was implemented by the City. The City is committed to bargaining such changes with the Unions in the future, as well as bargaining any other changes to the bargaining unit members' wages, benefits, and terms and conditions of employment that are mandatory subjects of bargaining under Florida law. It is the City's sincere desire for the City and the Unions to put this matter behind them and move forward and work together to address the many issues and opportunities facing the City.

Sincerely,

Russ Blackburn, City Manager

Bob Hunzinger, General Manager

Attachment B