



MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners **DATE:** October 8, 2007
FROM: City Attorney **CONSENT**
SUBJECT: Arbitrator Decision in Fraternal Order of Police, Gator Lodge 67 v.
City of Gainesville

Recommendation: The City Commission authorize the City Attorney to file an action challenging the Arbitrator's Award.

In the spring of 2006, as a result of having used its entire overtime budget for the year by fiscal mid-year, the police department began to look at what overtime was being used for and where cuts might be possible. In evaluating overtime in the form of holiday pay (officers receive either extra time off or double time or double time and a half for working holidays), the department determined that it could cut down on the number of employees working a holiday without affecting levels of service. Accordingly, management issued a directive that holiday work would be limited to those who were needed to work on that day, a decision to be made by management. In other words, management would determine the level of service and schedule employees to work as needed.

The Fraternal Order of Police (FOP), representing the sworn personnel in the ranks of officer, corporal, and sergeant, filed a grievance alleging that the City violated the Collective Bargaining Agreement. They argued that as long as the holiday fell on their regularly scheduled work day, it was their decision unilaterally whether to work the holiday and receive the overtime compensation, regardless of whether the City needed them to work. So, if 15 detectives wanted to work a holiday, all could work even though the City only needed 3 on duty.

The matter went to arbitration in June 2007. On September 13, 2007, the arbitrator issued his decision in the case. In that decision, the arbitrator found that the contract provided that if a holiday fell on an employee's regularly scheduled work day they were entitled to holiday pay regardless of whether the City wanted them to work. The arbitrator's decision cannot be reconciled with the contract as a whole, and the clear and unequivocal language of the holiday and overtime articles.


The arbitrator ignored the Management Rights Article that gives the City "the sole and exclusive rights, powers, and authority" to "schedule...employees, ... to relieve employees from duty because of lack of work, funds, or other legitimate reason,...to assign overtime and to determine the amount of overtime required...". The arbitrator ignored the language of the Holiday Article which provides that "The City observes the following paid holidays, but reserves the right to schedule work on these days." The arbitrator ignored language in the Overtime Article which provides that overtime rates "shall not be construed as a guarantee to such

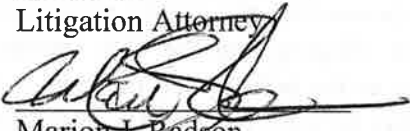
employee of any specified number of hours of work either per day or per week or as limiting the right of the City to fix the number of hours of work (including overtime) either per day or per week for such employee.” The arbitrator based his decision on language in the contract which does nothing more than give the employee a choice of compensation for the holiday once the City exercises its right to schedule work on the day.

In ignoring the language in the contract, specifically including the City’s management rights clause and the first sentence governing the scheduling of work on holidays, the arbitrator exceeded the scope of his powers under the contract. The contract between the City and the FOP provides that “The arbitrator shall have no authority to modify, amend, ignore, add too, subtract from other otherwise alter or supplement this Agreement or any part thereof or any amendment thereto.”

This issue has immediate and significant consequences for the City. If the City does not have the right to schedule its employees, then the City has no control over the level of service it offers and no control over its budget. The arbitrator’s decision is in derogation of the statutory rights given public employers because of their special responsibilities to the public.

For these reasons and upon consultation with and the recommendation of the City Manager, the City Attorney’s Office requests authorization to file a Motion in Circuit Court to vacate the arbitrator’s decision.

Prepared by: 
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Submitted by: 
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EAW/klm