

FAX: 338-7361

Commissioners: Newport
Byerly
Wheat
Hutchinson
Long
RFR
Iida Rawls

~~CONFIDENTIAL~~
2
OR (H) EQUAL OPPORTUNITY
CHAPTER 2
OFFICE
DARRELL E. ELMORE
P.O. BOX 5774
GAINESVILLE, FL 32602
Phone: (352) 336-4702

RECEIVED
JUL 23 2001

ALACHUA COUNTY
BOARD OF CO. COMMISSIONERS

July 22, 2001

THE GAINESVILLE SUN
VOICE OF THE PEOPLE

RE: CITY AND COUNTY CONTRACT ON EQUAL OPPORTUNITY

As a former employee of both the Alachua County Equal Opportunity Office and the City of Gainesville Equal Opportunity Office, I would like to provide clarification to the readers of The Sun in response to The Sun's Editorial that appeared in the Saturday, July 21, 2001, issue. The Editorial implied that there was a conflict of interest relating to the lawsuit and complaint of discrimination I filed against the City of Gainesville, and the Alachua County and City of Gainesville contract on anti-discrimination.

The lawsuit I filed against the City of Gainesville was filed by my attorney in U.S. Federal District Court and the complaint was filed directly by me with the U.S. Federal government. Under the 1964 Civil Rights Act and federal statute, a citizen of the United States has a right to file a lawsuit or a complaint when there is reason to believe that the person has been discriminated against. As a citizen of the United States, I exercised my right to file a complaint and a lawsuit, and both will be decided by Federal Authorities.

Chapter 111 of the Alachua County Code of Ordinances prohibits discrimination in housing, employment, and public accommodation based upon a person's race, religion, sex, national origin, etc. The ordinance exempted all municipalities in Alachua County and it also prohibited the County from investigating activities of any municipality, state, or federal government or subsidiary of any of these entities. In 1998 the City of Gainesville and Alachua County approved a contract that would allow the County to investigate within the City-limits of Gainesville and the County amended Chapter 111 to reflect this. However, Chapter 111 still prohibits the County from investigating the activities of any municipality, state or federal agency or its subsidiaries, including the City of Gainesville and its subsidiaries. The only thing the 1998 City and County contract on anti-discrimination does is: 1) Allow the County to investigate private businesses, etc. within the Gainesville City-limits for a negotiated annual fee. The contract does not allow the: 1) County or the City to investigate the activities or employees of the other entity. 2) City or County to exercise any supervisory authority over each other's employees or activities in any way. Annually, the County submits to the City of Gainesville a report summarizing the number of complaints investigated in the City-limits of Gainesville. Annually, the City and County Manager must decide to renew the contract and each respective Commission must approve it.

Submitted by,
Darrell E. Elmore

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**ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

ITEM **70 C-092501** AGENDA SECTION: **Consent - Administrative Services Group**

MEETING DATE: September 25, 2001	DATE COMPLETED: September 18, 2001	TIME CERTAIN:
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ITEM DESCRIPTION: **First Amendment to Interlocal Agreement Between Alachua County and City of Gainesville for Administration of the County's Human Rights Ordinance within the Gainesville city limits.**

REQUESTED BY: County Commission	ORIGINATING DEPARTMENT: Admin. Svcs/Equal Opportunity	PREPARED BY: Ida Rawls	PREPARER'S PHONE #: 334-0167
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DOCUMENT(S) REQUIRING ACTION: Amended Interlocal Agreement	AMOUNT: \$95,123.00
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EXECUTIVE SUMMARY: This action will approve the continued relationship with the City of Gainesville and Alachua County Government to administer the County's Human Rights Ordinance within the City of Gainesville's city limits, for the purpose of providing a local process for resolving complaints filed under the County's Anti-Discrimination Ordinance.

BACKGROUND: This represents the fourth year of this relationship between the City and County. The cooperative efforts of the two governments has enhanced the quality of life for those citizens who require assistance in accessing the complaint resolution process.

FINES:

ACTION

Recommendation: 1) Approve the Amendment

Alternative #1: Reject the Amendment and lose the revenue and associated local process within the City limits or explore other options

FISCAL IMPACT

Recommendation: N/A

Alternative #1:

Funding Sources: Revenue

Account Code: 001-1811-337.10-10

ATTACHMENTS:

SUGGESTED REFERENCE MATERIAL:

DEPARTMENT DIRECTOR 	OMB & CONTRACTS 	AGENDA OFFICE 	LEGAL 	RECEIVED COUNTY MANAGER 
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SEP 20 2001

3:29

IN WITNESS WHEREOF, the parties have caused this First Amendment to Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

ATTEST:

BY: Dave Newport
Dave Newport, Chair
Board of County Commissioners

J.K. "Buddy" Irby
J.K. "Buddy" Irby, Clerk
(SEAL)
ALACHUA COUNTY, FLORIDA

APPROVED AS TO FORM:
Paul [Signature]
Alachua County Attorney's Office

CITY OF GAINESVILLE

Thomas Bussing
Thomas Bussing, Mayor

ATTEST:

Kurt M. Lannon
Kurt M. Lannon, Clerk of the City Commission

APPROVED AS TO FORM AND LEGALITY
[Signature]
City Attorney

OCT - 1 2001

City of Gainesville

✓
OK

ADMINISTRATIVE SERVICES
MAIL STATION 7
352/334-5013; 334-3119 (fax)

To: Wayne Bowers
City Manager

Date: October 5, 2001

From: Glenda T. Currie
Administrative Services Director

Subject: Complaint Number: EO-I-2000-1

I have now completed the assigned investigation of complaint number EO-I-2000-1 filed by Steve Malu against Human Resources. On the complaint form, Mr. Malu checks discrimination on the basis of race, color, national origin and retaliation. The personal harm noted by Mr. Malu that he has suffered is "Extended probation for 90 days, loss of permanent status, loss of all benefits accrued to a permanent employee, and harassment at work". Attached to this two-page form is six pages of details, which Mr. Malu believes is information that substantiates his claim. (See Exhibit A.) In this attachment, he indicates that the complaint is for:

- 1) Retaliation for filing a complaint to the City Manager
- 2) Hostile Work Environment
- 3) Harassment
- 4) Disparate Treatment
- 5) Discrimination due to Race and National Origin

It is the five (5) items checked on the two-page form (Note: Retaliation is checked twice) and the five (5) items listed on the six-page attachment that this investigation attempted to research to determine if discrimination had occurred in any of these ways or forms. Due to some overlap and differences existing between the two (2) lists, I have chosen to combine them into the five (5) items listed below. This report will address each of the five (5) items individually and highlight any major findings in the following order:

- 1) Discrimination due to Race, Color and National Origin
- 2) Disparate Treatment
- 3) Harassment
- 4) Hostile Work Environment
- 5) Retaliation

1) DISCRIMINATION DUE TO RACE, COLOR, AND NATIONAL ORIGIN

Even though Mr. Malu does not give any specifics for the allegation of discrimination based on race, color and national origin, I researched the demographics of the Human Resources (HR) Department through the payroll system as of pay date of March 23, 2000. This was the payroll preceding the date the complaint was filed (3/30/00). The specific statistics were:

23 Total Employees on the HR Payroll

17 Females (74%)

6 Males (26%)

14 Whites (61%)

9 Minorities (39%)

The nine (9) minorities consisted of six (6) African-American employees, two (2) Hispanic employees, and one (1) Asian employee. (See Exhibit B.)

Finding #1:

These statistics reveal a department with an above average representation of both women and minorities. Furthermore, their hire or promotion dates, reveal that all nine (9) of these minority employees were either hired or promoted since May 8, 1995 when Mr. Motes became the Department Director. Additionally, thirteen of the seventeen female employees (76%) were hired under the auspices of Mr. Motes as the director. Of the four (4) remaining female employees, all have been promoted or re-classed to a higher position at some point since May 8, 1995.

2) DISPARATE TREATMENT

The clearest citation of disparate treatment in Mr. Malu's complaint occurs on page three (3) of the attachment wherein he states, . . . "Tom [Motes] gave me a four on Factor No. 7 (Following policies and procedures) This score should have been a definite 9, since I have never broken any City policy. What score does he give to other employees with one or more citation, if he gave me a four for no violation? This amounts to disparate treatment. He said he gives everyone a 5 on Factors 1, 2, 3, 17, 18. How is this true? Other employees evaluations need to be investigated to verify the truthfulness of this information, . . ."

While all of the evaluations for the individuals listed by Mr. Malu in the attachment were not pulled for verification, a sufficient number were reviewed. The evaluation scores assigned by Mr. Motes for Factor 7 and Factors 1, 2, 3, 17 and 18 were as follows:

Hanskat, Lynda (Evaluation Ending 03/02/99) (Factor 7 = Score 7) White Female (P)
(Factors 1, 2, 3, 17, 18 = All 5's)

Toser, Sonya	(Evaluation Ending 10/19/99)	(Factor 7 = Score 7) (Factors 1, 2, 3, 17, 18 = All 5's)	Hispanic Female (B)
Zumwalde, Rick	(Evaluation Ending 04/14/99)	(Factor 7 = Score 9) (Factors 1, 2, 3, 17, 18 = All 5's)	White Male (P)
McClary, Lynn	(Evaluation Ending 06/02/99)	(Factor 7 = Score 8) Factors 1, 2, 3, 17, 18 = All 5's)	White Female (P)
Lowry, Barb	(Evaluation Ending 06/27/99)	(Factor 7 = Score 6) (Factors 1, 2, 3, 17, 18 = All 5's)	White Female (B)
Taylor, Lianne	(Evaluation Ending 01/11/99)	(Factor 7 = Score 7) (Factors 1, 2, 3, 17, 18 = All 5's)	White Female (P)
Williams, Jimmie	(Evaluation Ending 10/18/99)	(Factor 7 = Score 9) (Factors 1, 2, 3, 17, 18 = All 5's)	Black Male (P)
Bernard, Cynthia	(Evaluation Ending 02/02/00)	(Factor 7 Score = 6) (Factors 1, 2, 3, 17, 18 = All 5's)	Black Female (B)
Manker, LaRose	(Evaluation Ending 01/23/00)	(Factor 7 = Score 6) (Factor 1, 2, 3, 17, 18 = All 5's)	Black Female (B)

(See Exhibit C.)

Finding #2:

Based on the above, there appears to be consistency in the scoring by Mr. Motes on factors 1, 2, 3, 17, and 18 across position types, (i.e., bargaining (B) versus professional (P)) gender, and race. There is variability in the scoring of Factor 7. Of special note is that Lianne Taylor, who was the Affirmative Action Officer prior to Mr. Malu, received all five's on items 1, 2, 3, 17 & 18 but scored a 7 on Factor 7. Also, the Bernard and Manker evaluations were researched per Mr. Malu's request and both reveal similar scoring.

Another citation of disparate treatment occurs on page 6 lines 2 and 3 of the attachment where Mr. Malu states, "Requiring me to perform above the threshold expected of others is disparate treatment and a pretext for discrimination". This sentence comes after Mr. Malu indicates "that based on Tom's evaluation, I (Steve Malu) have met standards on 23 factors out of 27 total factors. This is eighty-five percent (85%) of overall performance. This is a 'B' Average. Even with all the bias, I do not see anyone extending an employees probation with a B average overall".

Finding #3:

Mr. Malu's calculation of a letter grade and percentage for his City evaluation has no relevance since these types of scorings (i.e., assignments of percentages and/or letter grades) are not done for employees' evaluations in the City.

3) HARASSMENT

The first citation of harassment occurs on page 3 when Mr. Malu states, "In his evaluation narrative he accused me for taking too much of a leading role as if I was a Director, and then almost immediately, as

if he forgot, says that I am not taking enough leading role. Which is it? This is deliberate and intentional harassment for the complaint and for improving minority and women hires after a three-year decline under his administration”.

The notes to the performance evaluation written by Mr. Motes more specifically state, “Steve was hired as a working professional and not as a Director. Steve has a tendency to want to director rather than getting in and doing the work. By his actions, he has viewed that the Recruitment and Employment division should carry the load for attending job fairs and making contacts with outside organizations. The reason they are making these efforts are for targeted recruitment, which is an Affirmative Action function. He needs to take a lead role in this area”. (See Exhibit D.)

Mr. Malu’s second citation of harassment occurs in the attachment to the complaint form in the middle of page four (4). Mr. Malu states, “Another instance where Billie Sturgeon was walking the HR hallway screaming on top of her lungs “That useless Steve Malu”. Jimmie Williams heard her, because she was walking to Jimmie in the hallway. I believe others heard her as well. I was in my office and never said a word. This is because Tom has allowed some staff members to harass me telling them that I am not a team player.”

The investigation into the specifics behind Mr. Motes’ evaluation comments to Mr. Malu and Billie Sturgeon’s comments to Mr. Malu deal primarily with one incident surrounding a job fair held at the University of Florida on February 18, 2000. According to Mr. Motes, he (Motes) had specifically instructed Mr. Malu to attend, but was told on the morning of the fair by Billie Sturgeon that Mr. Malu had told her that he (Malu) was not going. When Mr. Motes approached Mr. Malu at a little past ten, Mr. Malu said that he was going but told Mr. Motes that since it did not start until 1:00 PM, he planned to leave later. According to Mr. Malu, he left at 10:30 AM and went to the fair. However, according to Ms. Sturgeon, he provided no assistance in setting up or breaking down the booth, was rarely at the booth, and during the 30 minute period he was at the booth was talking to and looking at a young candidate in a provocative manner. As a result of these events, Ms. Sturgeon told Steve Malu after they returned to HR that he had been useless that whole day. (See Exhibit E.)

Finding #4:

Since many of the facts as recited by Ms. Sturgeon were verified by independent sources, it was appropriate for Mr. Motes to make the statements he did to Mr. Malu in the notes to his evaluation.

4) HOSTILE WORK ENVIRONMENT

The first time Mr. Malu seems to indicate a hostile work environment is on page one (1) of the attachment to the complaint form wherein he describes a meeting on January 7, 2000 between Tom Motes, Jimmie Williams and himself. He writes, “On January 7, 2000 while in a meeting with Tom Motes and Jimmie Williams, I suggested to Tom that we should try the one for one policy, (Copy attached) to hire more minorities and women for those technical positions with affirmative action goals.

Tom’s reaction was abusive and disrespectful. He stood up in my face shouting and pointing to my face saying, “It is because of people like you that Ward Connerly is coming to Florida”. Ward Connerly

is the Anti-Affirmative Action Activist who killed Affirmative Action program in the state of California.

Tom went on to shout saying that He will join Ward Connerly's crusade against Affirmative Action. He became hostile, then banged the conference desk and left the room only to return back a little later screaming some more saying, "You know what"? You are not all that you think you are. I told you that I will give you an office, but now, I will not give you an office. I said to Tom "That's fine Tom, when Affirmative Action moves to the Charter office, I will get an office," and Tom said when Affirmative Action moves to the Charter Office, he is not going to cooperate with anyone because "it will then be you all's thing." Both Jimmie and I were shocked at Tom's behavior, and Jimmie said, "You guys let frustration get the best of you." "

Finding #5:

Mr. Motes' and Mr. Williams' recollections of the meeting, which were taken independently and on separate dates and times, are similar to each other and vastly different from Mr. Malu's. Per Mr. Motes and Mr. Williams, the conversation was an intense one with raised voices. However, according to both of them, Mr. Motes was never abusive, never disrespectful, nor did he bang the conference desk, nor did he stand up in Mr. Malu's face, nor did he point in Mr. Malu's face. Both indicated that Mr. Motes pointed his fingers when trying to make a point, but it was not done in Mr. Malu's face. Also, both were very decisive about the fact that Mr. Motes did not threaten to join Ward Connerly's crusade. However, they indicated that Mr. Motes had expressed great concerns over the legality of the one for one policy that Mr. Malu was advocating citing that his (Motes) preliminary research indicated such a policy was illegal. Mr. Motes further stated that organizations had to be careful whenever they initiated new and aggressive programs such as this one for one policy because they had to make sure it was legal so that they did not give individuals like Ward Connerly further ammunition for their campaigns. To reiterate, Mr. Williams confirmed the context of Mr. Motes' statement in reference to Ward Connerly.

The next example of a hostile work environment that Mr. Malu cites starts on the top of page two (2) of the attachment. He is referencing a HR staff meeting which occurred on March 17, 2000. Mr. Malu states, "Since then, Tom has embarked upon a crusade against me personally in Human Resources by inciting some HR employees against me. During a meeting, I simply asked questions relating to items on the agenda".

Finding #6:

Again, Mr. Malu's recollection of this staff meeting differs greatly from others in attendance. To use some of the HR employees' own words, it was Mr. Malu who was hostile, disrupted the meeting, displayed inappropriate and disrespectful behavior, was belligerent, was belittling of his co-workers, and was unprofessional and insubordinate. According to those interviewed, the meeting was such a traumatic experience that they felt they had to do something about Mr. Malu's behavior especially in light of the fact that Mr. Motes had done nothing to stop Mr. Malu. Only Jimmie Williams attempted to calm down Mr. Malu by repeatedly saying to Mr. Malu that this was not the proper forum to air these issues. Mr. Malu ignored Mr. Williams. Several of the HR employees took it upon themselves to make

LIST OF EXHIBITS

- Exhibit A: Copy of Complaint No. EO-I-2000-1 filed by Steve Malu
- Exhibit B: Copy of Payroll Records for the Pay Date of March 23, 2000 – Human Resources Department
- Exhibit C: Copy of Performance Evaluation for Hanskat, Toser, Zumwalde, McClary, Lowry, Taylor, Williams, Bernard and Manker
- Exhibit D: Copy of Notes to File for the Evaluation of Steve Malu dated March 16, 2000 written by Tom Motes
- Exhibit E: Copy of Career Fair Announcement and Statement from Billie Sturgeon dated March 1, 2000
- Exhibit F: Copies of Memos/E-mails written by Human Resources Employees after 3/17/00 Staff Meeting
- Exhibit G: Copy of Conflict of Interest Memo to City Manager from the Affirmative Action Officer (Steve Malu) dated February 21, 2000
- Exhibit H: Copy of Memorandum from Linda Keyton to Tom Motes of April 26, 2000
- Exhibit I: Copy of E-mail to Steve Malu from Tom Motes of February 18, 2000
- Exhibit J: Original Memo from Ron Combs of October 2, 2001, addressing legal issues raised by Mr. Gonzalez on behalf of Tom Motes
- Exhibit K: Copy of Respondent's Statement of Position prepared by Thomas M. Gonzalez on behalf of Tom Motes

Bowers, Wayne F.

From: Radson, Marion J.
Sent: Tuesday, October 09, 2001 12:49 PM
o: Bowers, Wayne F.
Subject: RE: Fire Merger Teams

My suggestion is that the city manager or county manager request certain staff to work with the city manager or county manager to fact find, and develop recommendations with the city manager or county manager. The managers then report to the Board (which can be done through certain designated staff). I would only refer to them as city manager or county manager staff teams. This office and the county attorneys office will provide legal counsel to you and staff, as necessary.
Marion

-----Original Message-----

From: Bowers, Wayne F.
Sent: Tuesday, October 09, 2001 7:35 AM
To: Radson, Marion J.
Subject: RE: Fire Merger Teams

I hope we can keep these teams out of the sunshine for numerous practical reasons. Please let me know what you and Dave decide. If we need to make some structural changes we can discuss with the Board on Monday.
WB

-----Original Message-----

From: Radson, Marion J.
Sent: Monday, October 08, 2001 12:59 PM
To: Bowers, Wayne F.
Cc: Hauck, Charles L.; Combs, Ronald D.; Hill, Monique; Murnahan, Alice F.; Williams, Suann; Higginbotham, R. Jenny
Subject: Fire Merger Teams

In the manner that these Teams have been constructed, I am concerned that these committees are subject to the application of the Government in the Sunshine Law. Under Florida case law, committees that are part of the decision making process are subject to the sunshine law. City or county managers can create committees that are subject to the sunshine law if they are charged with the duty of the city or county manager. This is in contrast to a committee that is purely fact finding for a city or county manager or staff that participate in a meeting with the city or county manager who then reaches decisions. I am further concerned that the future agendas provide for a report from these committees.

I have discussed this matter with Dave Wagner who will raise the same issue at the county staff meetings.

Marion J. Radson
City Attorney

City of Gainesville

Inter-Office Communication
Office of the City Manager
Mail Station 6
334-5010

TO: Glenda Currie
Administrative Services Director

DATE: October 26, 2001

FROM: Wayne Bowers
City Manager

SUBJECT: Equal Opportunity Department Complaint No. EO-I-2000-1

Thank you for your thorough investigation of the above-referenced complaint filed on March 30, 2000 by Affirmative Action Officer Steve Malu against the Human Resources Department. On October 23, 2001, you and I met to discuss your report. Based on your written report and our discussion of this case, I concur with your conclusion. The findings in your report support the conclusion that you "found no evidence to believe that the complaint of discrimination filed by Mr. Malu is valid." The extension of Mr. Malu's probationary period was a management decision made by the Human Resources Director and the evidence in your report indicates that this decision was not based on discrimination or retaliation.

As you are aware, the Affirmative Action Office was transferred on a temporary basis to the direct supervision of Assistant City Manager Carl Harness effective June 15, 2000. This transfer and the subsequent completion of performance reviews for Mr. Malu by the Assistant City Manager have eliminated several of the concerns mentioned in this complaint. As you indicated in your report, Mr. Malu has subsequently become a permanent employee and suffered no loss in pay or other benefits.

In your Finding # 5 you describe a meeting that included Steve Malu, Jimmie Williams, and Tom Motes in January 2000. In his complaint Mr. Malu states that during that meeting Mr. Motes was abusive and disrespectful. Your conclusion based on interviews with the participants was that the actions of Mr. Motes during the meeting did not constitute abusive behavior or creation of a hostile work environment. You do note, however, that based on your interviews the conversation at the meeting "was an intense one with raised voices." I will discuss this incident with Mr. Motes during my review of this complaint with him. I will remind him that during intense discussions with subordinates raised voices should be avoided in order to preserve professional decorum and avoid any misconception of creating hostile working conditions.

Should you have any questions concerning my response, please contact me.


Wayne Bowers
City Manager

WB/jh

Cc: City Attorney Marion Radson
Affirmative Action Officer Steve Malu
Human Resources Director Tom Motes
Assistant City Manager Carl Harness