

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

BROWARD COUNTY POLICE :
BENEVOLENT ASSOCIATION, INC., :
CHARTERED BY THE FLORIDA :
POLICE BENEVOLENT :
ASSOCIATION, INC., :

Charging Party,

Case No. CA-2012-016

v.

ORDER DIRECTING RESPONSES

CITY OF HOLLYWOOD,

Respondent.

Michael Braverman, Fort Lauderdale, attorney for Charging Party.

J. Robert McCormick, Tampa, attorney for Respondent.

The Notice of Telephone Hearing and Prehearing Order, issued December 11, 2017, directs the parties to file prehearing statements by February 22, 2018. In part, the parties have been asked to identify all disputed issues of material fact and legal questions to be presented for resolution. In light of the procedural history in this case and the current state of the law surrounding declaration of financial urgency, I find it necessary to clarify the pending issues in this case, as I see them.

As the parties are aware, the Florida Supreme Court has recently concluded that Section 447.4095, Florida Statutes, permits the unilateral implementation of changes to a collective bargaining agreement (CBA) only after the parties have completed the impasse resolution. See *Walter E. Headley, Jr., Miami Lodge #20, Fraternal Order of Police, Inc. v. City of Miami*, 38 FPER ¶ 330 (2012), *rev'd*, 215 So. 3d 1 (Fla. 2017). On remand, the

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Commission in *Headley* concluded that the City of Miami had violated Section 447.501(1)(a) and (c), Florida Statutes, finding that it was unnecessary to determine whether the City of Miami could prove financial urgency because it had implemented changes to the CBA prior to completion of the impasse resolution proceedings. See *Headley*, 44 FPER ¶ 128 (2017) (order remanding case to hearing officer) and 44 FPER ¶ 128 (2017) (Commission's order on Merits of Unfair Labor Practice Charge).

Here, the City of Hollywood (City) does not appear to dispute that it declared financial urgency for fiscal year 2011-2012 or that it modified the parties' CBA prior to completing the impasse process in Section 447.403, Florida Statutes. See City's Answer at ¶ 4 and 9. Based on the City's admissions, and in light of *Headley*, I do not need to reach the issue of whether the City appropriately declared financial urgency because it appears that the City violated Sections 447.501(1)(a) and (c), Florida Statutes, when it unilaterally changed the terms of the parties' agreement prior to completing the impasse resolution process.¹

With that said, the remaining issue for resolution is the remedy to be afforded under the circumstances, including whether a contractual waiver of any remedy applies, as raised in the City's November 13 response and the Union's November 27 response.

¹ I acknowledge that some of the allegations that form the basis for the instant unfair labor practice charge also were litigated in a prior financial urgency case between the same parties. See *Broward County Police Benevolent Association, Inc., Chartered by the Florida Police Benevolent Association, Inc. v. City of Hollywood*, 39 FPER ¶ 62 (2012), *per curiam aff'd*, 115 So. 3d 362 (Fla. 1st DCA 2013). I also recognize that the instant case is procedurally distinct because a hearing has not been held yet.

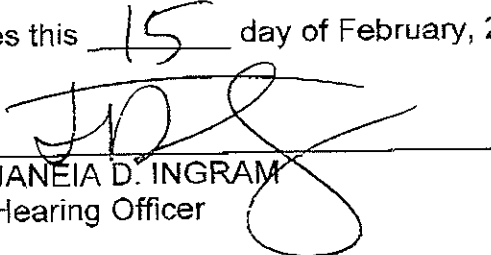
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Also remaining is the question of whether either party is entitled to an award of attorney's fees. Of these issues, only the question of waiver necessitates an evidentiary hearing.

Therefore, I am inclined to limit the hearing presently scheduled for March 6 to the waiver issue only and to allow the parties to file argument on the issues of the remedies to be afforded and the appropriateness of an award of fees and costs in their post-hearing briefs.

Based on the foregoing, the parties are directed to identify in their prehearing statements the specific aspects of remedy that require an evidentiary hearing as well as any other issues that require a hearing. The parties are encouraged to prepare factual stipulations to help narrow the scope of the hearing, as appropriate.

ISSUED and SERVED on all parties this 15 day of February, 2018.



JANEIA D. INGRAM
Hearing Officer

JDI/bjk