

STATE OF FLORIDA

PUBLIC EMPLOYEES RELATIONS COMMISSION

WALTER E. HEADLEY, JR., MIAMI
LODGE #20, FRATERNAL ORDER
OF POLICE, INC.,

Charging Party,

v.

CITY OF MIAMI,

Respondent.

Case No. CR-2017-001
(Relates to CA-2010-119)

ORDER REMANDING CASE
TO THE HEARING OFFICER

Robert D. Klausner, Plantation; Paul A. Daragjati, Jacksonville; Ronald J. Cohen, Fort
Lauderdale; Osnat K. Rind, Miami, attorneys for charging party.

Michael Mattimore, Tallahassee; Luke C. Savage, Coral Gables; and Victoria Méndez,
Kevin R. Jones, and John A. Greco, Miami, attorneys for respondent.

On April 12, 2017, after a procedural history unnecessary to repeat here, the District Court of Appeal, First District, remanded this case to the Commission for further proceedings consistent with the Florida Supreme Court's corrected opinion in *Walter E. Headley, Jr., Miami Lodge #20, Fraternal Order of Police, Inc., et al. v. City of Miami*, 42 Fla. L. Weekly S378, 2017 WL 819740 (Fla. Mar. 2, 2017). On April 18, the City of Miami (City) filed a motion for the Commission to remand the case to a hearing officer for further evidentiary proceedings, which the Walter E. Headley, Jr., Miami Lodge #20, Fraternal Order of Police, Inc. (FOP), opposes. On April 24, the FOP filed a motion to strike the City's motion and a motion for entry of a final judgment by the Commission

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without remanding the case to a hearing officer, which the City opposes.¹ Resolving these motions requires applying the Supreme Court's opinion.

This case involved the City's declaration of financial urgency pursuant to Section 447.4095, Florida Statutes (2016). In reviewing the City's declaration, the Supreme Court applied a three pronged strict scrutiny analysis.

The first prong requires the City to demonstrate a financial urgency, i.e., "a dire financial condition requiring immediate attention and demanding prompt and decisive action, but not necessarily a financial emergency or bankruptcy." The second prong of the strict scrutiny analysis involves the phrase "requiring modification," found in Section 447.4095, Florida Statutes (2016). The phrase "requiring modification" requires the City to demonstrate that the only way of addressing its dire financial condition is through modification of the collective bargaining agreement. To do this, the City must demonstrate that the funds are available from no other reasonable source.

The third prong of the strict scrutiny analysis is contingent on the City demonstrating the first two prongs. The unilateral implementation of changes to a collective bargaining agreement is permitted only after the City and FOP complete the Section 447.403, Florida Statutes (2016), impasse resolution proceedings and fail to ratify the agreement.

¹The FOP's motion to strike is denied.

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In resolving the City's motion to remand the case to a hearing officer for further evidentiary proceedings, it is unnecessary to determine whether the City can prove the first two prongs of the strict scrutiny analysis because it cannot demonstrate the third prong. The hearing officer found facts demonstrating that the City did not proceed through the Section 447.403, Florida Statutes (2016), impasse resolution proceedings prior to modifying the collective bargaining agreement as required by Section 447.4095, Florida Statutes (2016). *Miami Lodge #20, Fraternal Order of Police*, 38 FPER ¶ 330 (2012) (findings 35-40).² Therefore, the City was not statutorily authorized to unilaterally modify the collective bargaining agreement. Consequently, the City violated Section 447.501(1)(a) and (c), Florida Statutes, when it unilaterally changed wages, pensions, health insurance, and other monetary items for the employees in the bargaining unit represented by the FOP prior to completing the Section 447.403, Florida Statutes, impasse resolution procedure.

The FOP's motion to return the parties to the status quo ante and the FOP's motion for an award of attorney's fees and costs remain unresolved. We remand this case to Hearing Officer Joey D. Rix to make a recommendation on the FOP's motions. Relying on the existing record, the hearing officer shall have fourteen days from the date of this order to issue a supplemental recommended order, or if he allows the parties to

²The hearing officer's factual findings are supported by competent substantial evidence received in a proceeding which satisfied the essential requirements of law. § 120.57(1)(l), Fla. Stat. (2016).

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file argument, fourteen days from receipt of the pleadings. After the hearing officer issues a supplemental recommended order, exceptions and responses may be filed in accordance with Florida Administrative Code Rule 28-106.217.

It is so ordered.
POOLE, Chair, BAX and KISER, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on May 18, 2017.

BY: *Barry Edunro*
Clerk

/rlb

