

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION
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**BROWARD COUNTY POLICE
BENEVOLENT ASSOCIATION, INC.
CHARTERED BY THE FLORIDA
POLICE BENEVOLENT ASSOCIATION
INC.,**

Charging Party,

v.

CITY OF HOLLYWOOD,

Respondent,

CASE NO. CA-2012-016

**CHARGING PARTY'S
PREHEARING STATEMENT**

The Charging Party, **BROWARD COUNTY POLICE BENEVOLENT ASSOCIATION, INC., CHARTERED BY THE FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., (“PBA”)**, through its undersigned counsel and pursuant to the Notice of Telephone Hearing and Prehearing Order, hereby files this Charging Parties Prehearing Statement.

a. Disputed Issues of material fact to be presented for resolution.

1. The City of Hollywood has engaged in a course of conduct which is in violation of Chapter 447.501(1)(1)(a) and (c), Florida Statutes.

2. On September 21, 2011 the City without agreement of the PBA and without ratification by the PBA and without the completion of the impasses process, the City unilaterally imposed wage and benefit reductions and to imposed layoffs. The City unilaterally eliminated all merit pay increases without complying with Chapter 447.403 or 447.4095. The City violated Chapter 447.501(1)(a) and (c).

3. The City failed to bargain over certain changes and failed to bargain in good faith on certain changes which were unilaterally imposed prior to the completion of the impasse procedure.

4. Was the City of Hollywood City Commission advised prior to voting to unilaterally reduce pay and eliminate or freeze pension benefits in a public meeting that the unilateral change and reduction in pay and benefits prior to completing the statutory impasse procedure is unconstitutional and a violation of state law?

5. Did the City's actions in unilaterally reducing pay and benefits result in a financial hardship for bargaining unit members? How many bargaining unit members left the City to preserve their pension benefits, retired or enter the deferred retirement option program (DROP)?

6. What pay, and benefits were unilaterally reduced. How much of the pay and benefits have been restored?

7. How did the Pension Board respond to the City's unilaterally reducing/freezing pension benefits?

8. The City knew or should have known that their actions were unlawful. The awarding of a reasonable attorney's fee and all costs associated with the filing of this case.

9. The Parties have addressed the pending Charge in subsequent collective bargaining sessions. The language found at Article 37.6 of the Collective Bargaining Agreement 10/01/14 – 09/30/17 Between the Broward County PBA and the City of Hollywood. The language states:

The Union agrees for itself and for all bargaining unit employees to waive, renounce, and forgo any and all remedies and payments whatsoever related to the modifications to any part of the Collective Bargaining Agreement or the Pension Plan Ordinance made by the City pursuant to financial urgency to which it or they are or may become eligible to receive, whether resulting from an award by any tribunal or through settlement of any matter related to such changes, including the pending unfair labor practice charges that are on appeal in Case Number 1D12-3901 and PERC Case No. CA-2011-098 and/or the unfair labor practice charges that are stayed in PERC Case No. CA-2012-216.

10. The language found at Article 38: Complete Agreement and Waiver of Bargaining, which states:

38.2: It is understood and agreed that if any part of this Agreement is in conflict with mandatory Federal or State Laws, or mandatory Federal or State Laws, or mandatory provisions of the City Charter, such parts shall be renegotiated, and the appropriate mandatory provisions shall prevail.

38.3: Should any part of this Agreement or any portion therein contained be rendered or declared illegal, legally invalid, or unenforceable, by a Court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet as soon as practical to negotiate substitute provisions of this Agreement.

11. Is the City obligated to meet and negotiate aa substitute provision of article 37.6? Has the City requested to meet?

b. Legal questions to be presented for resolution.

1. Has the City has violated the provisions of chapter 447.501(1)(a) and 1(c), or any other section of the chapter 447.501 by unilaterally altering terms and conditions of employment of bargaining unit members or by interfering with, coercing, and restraining bargaining unit members in the exercise of such rights.

2. Is the language contained in the current collective bargaining agreement in Article 37.6 legally valid or is it void by operation of Article 38?

3. What is scope of the language contained in Article 37.6? What is the duration of the language contained in Article 37.6?

4. Is the language contained in Article 37.6 clear and unmistakable?

5. Was the language contained in Article 37.6 entered into freely and voluntarily?

6. Is the language contained in Article 37.6 ineffective and void “*ab initio*” because it abridges fundamental rights to vested benefits, the right to collectively bargain and to enter into contracts.

7. Is the language contained in Article 37.6 illegal in whole or in part.?

8. Did the PBA or City have the ability to have the individual constitutional or statutory rights to vested pension benefits reduced through the majoritarian process of collective bargaining?

9. Is the language contained in Article 37.6 void based on public policy?

10. Did the City bargain in bad faith?

11. The City’s actions were in violation of Chapter 447.4095 and 447.403.

12. The City knew or should have known its actions were illegal/unlawful. The PBA should be awarded Attorney's Fees and costs.

13. The City's Affirmative Defenses should be stricken and/or denied.

14. Is the City obligated to return to the status quo prior to the unconstitutional and illegal unilateral change to pay and benefits?

15. What is the appropriate remedy?

16. Is the PBA entitled to an award of Attorney's fees?

c. Any witnesses to be called at the hearing (except rebuttal witnesses), and the relevant issues about which each witness will testify.

1. **Mr. Jeffery Marano**, President PBA and chief negotiator for all relevant time periods. He will testify about the facts contained within the charge, the actions of the City and the PBA during meetings before the City Commission, collective bargaining negotiation sessions and bargaining unit meetings. He will testify about the impact of the illegal and unconstitutional changes. He will testify about the changes to the police pension and the actions of the police pension board.

2. **Sergeant Richard Losenbeck**, PBA Representative and member of PBA collective bargaining team for all relevant time periods. He will testify regarding the facts contained within the charge and economic impact of the illegal and unconstitutional changes. He will testify about the changes to the police pension and the actions of the police pension board.

3. **Detective Joe Tango**, PBA bargaining unit member will testify regarding the impact of the illegal and unconstitutional changes and the lack of time to address the loss of income.

4. **Detective Juan Rios**, PBA bargaining unit member will testify regarding the impact of the illegal and unconstitutional changes and the lack of time to address the loss of income.

5. **Officer Rodger Stacy**, PBA bargaining unit member will testify regarding the impact of the illegal and unconstitutional changes and the lack of time to address the loss of income.

6. Records Custodian for the City and Police Department.

7. Any witness listed by the City and all impeachment and rebuttal witnesses.

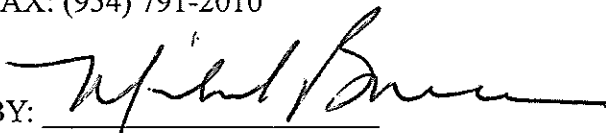
8. The PBA reserves the right to amend this prehearing statement and witness list.

d. Any outstanding motions or procedural questions to be resolved.

1. None at this time.

I certify that a copy of this prehearing statement was filed with the Commission and a copy
emailed to Mr. J. Robert McCormick Esq. @ bob.mccormack@ogletreedeakins this 22 day of February,
2018.

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BY: 
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Public Employees Relations Commission

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CA-12-016

Broward County Police Benevolent Association, Inc., chartered by the Florida Police Benevolent Association, Inc. vs. City of Hollywood

Filer:	Michael Braverman
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Case No.:	CA-12-016
Document:	Pre-Hearing Statement
Title:	Charging Party's Pre-Hearing Statement
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NOTE: It is your responsibility to serve a copy of your pleading or paper on the other parties in this case.