



MEMORANDUM

Agenda Item No. 5(L)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Public hearing and vote of
Commission to resolve labor impasse
between Miami-Dade County and
AFSCME Local 121, Miami-Dade
Water and Sewer employees,
regarding the terms of a
memorandum of understanding
(MOU) for the gainsharing program
pursuant to Article 20 of the
Collective Bargaining Agreement
approved by resolution No. R-07-12.

The attached item was prepared and placed on the agenda at the request of Prime Sponsor Chairman Joe A. Martinez.

Please find the following documents related to this item:

- A) Article 20 of the Collective Bargaining Agreement
- B) Management's proposal presented to the Union on May 24, 2012
- C) June 27, 2012, letter from Union's attorney declaring impasse
- D) July 9, 2012, letter from Union's attorney requesting time certain before the Commission



R. A. Cuevas, Jr.
County Attorney

RAC/cp



MEMORANDUM
(Revised)

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SUBJECT: Agenda Item No. 5(L)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required.

Attachment A

furlough day and "unauthorized" until appropriate documentation or explanation is provided to substantiate the absence.

ARTICLE 20 PRODUCTIVITY

The Parties to this Agreement recognize that the Employer's position in performing the assigned mission is enhance by increased efficiency in the use of labor and employee productivity.

The Parties agree that increased productivity and efficiency depend upon the continuous development and implementation of modern and progressive work practices.

The Union agrees to encourage employees to find better and more efficient methods of performance and to cooperate with the Employer in the conservation of manpower, materials, and supplies; the elimination of wasteful practices and the improvement of the quality and quantity of product and/or service.

The parties agree that a part of the Labor Management Committee Meetings will be to review and evaluate recommendations of employees and management designed to increase productivity either directly or indirectly through identification of inefficiencies in work production, changes in work practices or rules, strengthening morale, or improving communications between employees and management. The Labor Management Committee may make written recommendations to increase productivity which will be presented to the Director of the Department for his consideration.

The parties agree to implement performance-based compensation projects involving bargaining unit classifications. These Performance-based Compensation Projects shall be a collaborative effort between the County and the Union to effect meaningful performance-based productivity gains that are designed to enhance the effectiveness and efficiency of the Department. There will be a committee established to review Performance Based Compensation Projects, which shall be comprised of equal amounts of representatives from each of the parties as mutually agreed upon. Union representatives shall be appointed by the Union President.

The parties agree to work together to develop additional criteria to the gainsharing program through a memorandum of understanding (MOU) within ninety (90) days following the ratification of this agreement. In the event the parties fail to develop a MOU, the parties shall submit their dispute over the terms of the MOU to the County Commission for resolution in accordance with the provisions of Fla. Stat. Chapter 447.

The performance-based gainsharing provided for in this Article shall be in conformance with established gainsharing guidelines and the MOU. A savings pool will be established which shall consist of the net savings in excess of the performance targets established by the MOU to be developed by the parties. Twenty-five (25) percent of the savings pool shall be available for distribution as gainsharing incentive pay to all members of the bargaining unit. In addition, such incentive pay shall be distributed equally among all members of the bargaining unit and in advance of the holiday season, if feasible, and in accordance with the gainsharing MOU to be developed by the parties.

ARTICLE 21 MANAGEMENT RIGHTS AND SCOPE OF THIS AGREEMENT

The Union recognizes that the County and the Department possess the sole right to operate and manage the Department and direct the work force, and the rights, powers, authority and discretion which the County and Department deem necessary to carry out their responsibilities and missions shall be limited only by the specific and express terms of this Agreement.

These rights and powers include, but are not limited to the authority to:

- a. Determine the missions and objectives of the Department;
- b. Determine the methods, means, and number of personnel needed to carry out Department responsibilities;
- c. Take such actions as may be necessary to carry out services during emergencies declared by the Water and Sewer Department or the County Manager;

4 

DRAFT

Miami-Dade County

Water and Sewer Department

Memorandum of Understanding

I. PREAMBLE

This Memorandum of Understanding (MOU) memorializes an agreement reached on _____, 2012 between the County, Water and Sewer Department, (WASD), and AFSCME Local 121 (Union) hereinafter referred to as "the parties", to establish a department-wide efficiency and Gainsharing program. The parties agree that this MOU satisfies the parties' obligations under Article 20 and 21 of the CBA.

II. TERM

The term of this MOU will be from Fiscal Year 2011-12 through Fiscal Year 2013-14 contract period and can be extended by mutual consent of the parties for up to two additional one-year periods.

III. SCOPE

This agreement is predicated on a defined efficiency project with a financial savings goal, comparable standards, and performance measures. The agreement includes performance-based Gainsharing in conformance with the Countywide Gainsharing Guidelines. This agreement includes projects that the union will be able to bid and/or propose to perform with existing WASD employees. If the Department agrees to accept an Efficiency Project proposal from Local 121 (which is solely in management's discretion), the parties agree to develop a project specific agreement using this MOU as a model and such project specific agreement shall contain performance targets, goals and criteria that are specific to that project. Any proposal from Local 121 to perform work pursuant to this MOU shall be given full and fair consideration. However, the decision of whether any particular activity or project is performed by bargaining unit members or outside vendors remains at all times within the Department's complete discretion and the parties agree that such decision is not subject to grievance and not subject to arbitration.

A. Efficiency Project

An efficiency project is defined as achieving financial savings more efficiently and effectively, through the use of WASD employees. The union, having met all the applicable criteria, standards, timelines, criteria and conditions specified can bid on work that the Department is proposing to bid to outside vendors.

B. Performance Targets

To the extent possible, performance targets reflect best practice performance levels. Performance targets will reflect a commitment to operating the WASD effectively, efficiently, and in a manner commensurate with a quality working environment and quality customer service. It will be the responsibility of WASD to gather and maintain accurate records of performance data under this MOU. A special ERP Project code will be established to track the savings. Performance measures and performance targets will be established in a project specific agreement that is entered into by the parties if the Department in its sole discretion agrees to accept a Local 121 proposal to perform work pursuant to this MOU. Performance measures and performance targets will be reevaluated periodically and no less than annually and adjusted accordingly.

C. Financial Target

A financial target will be an amount set forth in a project specific agreement that the Department and the Union agree that the Union must meet in order to generate a savings pool. The savings pool will be the amount saved by performing the work with in-house staff vs. the cost of outsourcing. The scope of work and cost must be an exact, comparable comparison of the cost proposed by a vendor or/contractor or actual charges incurred by WASD, for the same exact work including all incidental costs such as warranties and repairs. A written contract, proposal or invoice for the same scope of work must be provided by the union. The union must also agree to the terms and conditions provided, including a timeline.

In the event the proposed financial targets are not achieved, the cost in excess of the financial targets will be charged against the savings pool.

D. Savings Pool

Gainsharing will be contingent upon the creation of a savings pool, which is the total of net savings in excess of the contractor cost/proposal taking all factors into account. A maximum of 25% of the savings pool shall be made available for distribution as Gainsharing bonuses to eligible employees, consistent with the County's policy as reflected in the Countywide Gainsharing Guidelines.

IV. ADMINISTRATION OF AGREEMENT

A. Proposal and Evaluation Process

The parties agree that the process and procedures established by the Department's Employee Recognition Program for Efficiency Savings and Process Improvement should be used to propose and evaluate Local 121's proposals to perform work pursuant to this MOU although the parties may by written mutual agreement amend the processes for proposing and evaluating Local 121's proposals to perform work pursuant to this MOU. The adoption of the processes established for the Employee Recognition Program for Efficiency Savings and Process Improvements as a procedure for this MOU does not change or effect the use of the Employee Recognition Program for Efficiency Savings and Process Improvements for proposals not made pursuant to this MOU such as but not limited to employee suggestions. Notwithstanding the

nature of the process used, the decision of whether any particular activity or project is performed by bargaining unit members or outside vendors remains at all times remains within the Department's complete discretion and the parties agree that such decision is not subject to grievance and not subject to arbitration.

B. Annual Review

At the close of each fiscal year, WASD's financial and operational performance will be reviewed for conformity with the standards contained within this MOU. This annual review will involve staff from WASD and Office of Management & Budget (OMB), representatives of WASD's unions, and may involve staff from the Audit and Management Services Department (AMS). The close-out should be completed within 90-days of fiscal year-end and pursued with the intent to distribute Gainsharing bonuses in advance of the holiday season.

This review will be used to establish year-end review to determine achievement of the performance targets contained within this MOU. The annual review also will determine the amount of savings, if any, available for the purpose of Gainsharing and to be credited to the special purpose account. It will be the responsibility of WASD to gather and maintain accurate records under this MOU.

During the annual review the parties will establish the financial target goal for the subsequent year and will determine whether adjustments to performance targets are required. Targets will be established so as to reward superior performance and encourage continual improvement on the part of employees. Details regarding adjustments that may be necessitated by uncontrollable events or changes in law are provided in Subsection E of this Section.

Meeting the 90-day deadline will necessitate utilization of un-audited figures; if audited figures subsequently prove to be significantly divergent, the savings pool will be adjusted accordingly in future years until the discrepancy is eliminated.

C. Special Audits

In addition to the annual review, the County reserves the right to have AMS perform special audits of departmental operations. Special audits may occur at any time during the fiscal year for the purpose of determining departmental performance relative to the financial and operational targets established herein.

D. Gainsharing Distribution

A maximum of 25% of an established savings pool will be available for Gainsharing, consistent with the project specific agreement for that proposal and Countywide Gainsharing Guidelines. This amount will be adjusted based on the average percentage of first-tier performance targets attained. Gainsharing awards will be capped at \$2,000 per employee, per year.

E. Employee Eligibility

All AFSCME Local 121 bargaining unit employees will be eligible for Gainsharing provided they meet the rules in this MOU and that a savings pool is created and that the financial performance targets associated with the program goals and the project specific agreement are met and exceeded. The following eligibility rules are applicable to this MOU and are consistent with the Countywide Gainsharing Guidelines.

1. General Eligibility Rules:

Award recipients must be County employees regardless of employment status (i.e. full-time, part-time, temporary, substitute, probationary, exempt, etc).

Participants who separate from the County prior to the time of actual Gainsharing distribution are not eligible for an award. However, employees who retire from County during the MOU period are eligible for a prorated Gainsharing award.

Employees who are delinquent in court-ordered payments will have their awards garnished according to state law.

Employees will have had to work at least six pay periods in the Gainsharing program to be eligible for an award.

2. Prorating Bonuses:

A full-time County employee working the full length of the Gainsharing period will receive a full share.

Employees who transfer to another County department during the MOU period are eligible for the time spent in the program.

Distributions to part-time County employees will be prorated to reflect the portion of a year worked in relation to a full-time employee.

Employees who transfer into or out of WASD during the MOU period, or who are out of pay status, on family leave, leave without pay, or extended sick or injury leave, will have their distributions prorated to reflect the portion of the Gainsharing period worked.

3. Impact of Job Evaluations, Counseling, Disciplinary Actions, and Other Actions:

a. Job Evaluations:

An employee's most recent evaluation must be satisfactory or above to establish eligibility for a Gainsharing award. Effort should be made by the Department to bring evaluations up to date; evaluations should reflect performance under the MOU as closely as possible.

If an employee's evaluation is below satisfactory and covers more than half of the time an employee works during an MOU program year, the employee will not be eligible for an award.



If an employee's evaluation is below satisfactory and covers less than half of the time an employee works during an MOU program year, the employee's distribution will be held until the succeeding evaluation. If that evaluation is satisfactory or above, the employee will receive a distribution of award.

If an employee's evaluation is satisfactory or above, but covers less than half of the time an employee works during an MOU program year, the employee will receive a distribution on the condition that the satisfactory evaluation is maintained. However, if the employee's next evaluation falls below satisfactory and the MOU is still in operation, that employee's conditional award will be recaptured from the employee's future Gainsharing distributions. Employees will not be expected to reimburse the County if the full amount of the conditional award is not recaptured by the end of the MOU term.

Any employee who has received a written reprimand during an MOU program period will remain eligible for Gainsharing under the above rules. However, the distribution will be contingent upon the employee receiving a satisfactory or above evaluation for at least one-half of the program period. Consequently, Gainsharing distributions for employees receiving written reprimands will be held until an evaluation covering the specified period is available.

Employees appealing a job evaluation will have their award set aside until the appeal is resolved.

b. Counseling:

Neither informal employee counseling nor formal records of counseling should have an effect on an employee's eligibility for an award.

c. Disciplinary Actions:

Neither a written reprimand nor a suspension during an MOU period will impact an employee's eligibility for a Gainsharing award.

Employees dismissed for disciplinary reasons during an MOU program year will not be eligible for a Gainsharing award, unless through the completion of the appeal process under Section 2-47 of the County Code or the arbitration process under the CBA, the dismissal is reduced and the employee is reinstated to County service. . However, even if such reinstatement occurs, the distribution will be contingent upon the employee receiving a satisfactory or above evaluation for at least one-half of the program period.

Employees appealing a Disciplinary Action Report (DAR) that contributed to an unsatisfactory evaluation will have their distribution held until the appeals process is concluded. If the employee wins on appeal, the award will be paid providing the employee receives a satisfactory or above evaluation for at least one-half of the program period.

d. Other Actions:

Employees with demotions that are voluntary or not due to disciplinary reasons are eligible for a full share of any award.

Employees under criminal indictment or investigation for a work-related offense will be eligible for awards only if the matter is resolved in the employee's favor. Any award will be held until the outcome is determined.

Employees suspended for disciplinary or other reasons, including as a result of an information or indictment per Section 2-42 (22) or the Code of Miami-Dade County, will have their award held in suspension until their suspension under Section 2-42(22) is resolved in their favor. If the employee is ultimately suspended, demoted, or dismissed by the County, their eligibility for a Gainsharing award will be treated as discussed under "Disciplinary Actions" above. If the employee's suspension is resolved in their favor under Section 2-42(22) and there is no disciplinary action taken by the Department, , the award will be paid, providing the employee receives a satisfactory or above evaluation for at least one-half of the program period.

F. Uncontrollable Events/Changes in Law

While the parties agree on the reasonable assumptions on which this MOU is based, the parties also understand and acknowledge that extraordinary unforeseen events, beyond the reasonable control of employees and management, may result in costs and/or savings that could significantly affect their ability to meet the stated objectives.

1. Uncontrollable Events:

For the purposes of this MOU, the stretch goal and performance targets may be adjusted in response to events and circumstances beyond WASD's reasonable control. These include extraordinary forces of nature such as droughts, floods, washouts, major storms, hurricanes, and other acts of nature or circumstances beyond the control of the department. In addition, uncontrollable circumstances relating to unforeseen operating adjustments, and any other events beyond WASD's reasonable control that have a material effect upon costs or WASD's ability to perform under this MOU may have the effect of re-opening negotiations to make appropriate adjustments.

2. Changes in Law:

"Changes in law" means generally any of the following events which occur after the agreement date:

- a. The promulgation, modification or written change in interpretation by a controlling authority of any applicable law unless WASD had notice or should have had notice of such change as of the date of this proposal; or
- b. The order or judgment of any court or other controlling authority as long as it was not the result of a willful or negligent act or lack of reasonable diligence by a party to this MOU.

A "change in law" shall not include a change in any tax or similar law.

The parties shall be responsible for investigating uncontrollable events and/or changes in law to determine materiality, and shall present such findings to the Mayor for approval to issue notice stating the cost and consequence of the event. Depending on the nature of the event and findings, the parties to this MOU may reconvene to renegotiate the stretch goal in light of the event. In this case, only the stretch goal of this MOU related to the specific event shall be reopened, all other terms and conditions shall remain unchanged.

G. Labor-Management Cooperation

The parties to this MOU acknowledge that cooperative labor/management relations, as typified by the relationship established in developing this program and MOU, are critical to meeting the competitive challenge and objectives detailed in this document. The parties commit to maintaining the momentum, energy, and goodwill of this effort.

H. Relationship with Labor Contracts

It is the intent of the parties that this MOU be interpreted in harmony, and compliance with the comprehensive labor contracts between Miami-Dade County and authorized employee organizations representing WASD employees, currently AFSCME Local 121 and GSAF Local 100. All rights and benefits of the parties under existing and future labor contracts are preserved. Any labor disputes related to collective bargaining agreements shall be resolved through the applicable use of established processes within labor agreements in effect at the time of the dispute. The decision of whether any particular activity or project is performed by bargaining unit members or outside vendors at all times remains with the Department and the County and Local 121 agrees that such decision is not subject to grievance and not subject to arbitration.

I. Severability

In the event that any condition, covenant, or provision of this MOU is held to be invalid or void by any court of competent jurisdiction, or is deemed to be contrary to the law or any covenant or condition or provision of any contract to which the County is a party, the same shall be deemed severable from the remainder of this MOU and in no way shall affect any other covenant, condition, or provision. If any covenant, condition, or provision of this MOU is deemed to be invalid due to scope or breadth, such covenant, condition, or provision shall be deemed valid to the extent the scope or breadth is permitted by law.

J. Impacts on Staff

The parties understand that a top priority of County management is to optimize departmental operations and, in the process of doing so, to protect the employment rights of all affected employees. To that end, the parties agree that every reasonable effort will be made to effect staffing reductions, if necessary, through attrition.

This agreement shall be effective only after the ratification of all parties listed below as evidenced by their respective signatures and approval of the Board of County Commissioners.

IN WITNESS WHEREOF, the undersigned agree to the terms and conditions specified in this MOU.

DATE:

PHILLIPS, RICHARD & RIND, P.A.
ATTORNEYS AT LAW

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MARK RICHARD
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OF COUNSEL:
LIBBY HERRERA-NAVARRETE, P.A.
PATRICIA IRELAND

June 27, 2012

Commissioner Joe A. Martinez, Chairman
Miami-Dade County
Board of County Commissioners
Stephen P. Clark Center
111 N.W. 1st Street, Suite 320
Miami, Florida 33128

Re: Declaration of Impasse

Dear Chairman Martinez:

This firm represents the American Federation of State, County, and Municipal Employees (AFSCME) Local 121, AFL-CIO. As you may recall, the Union argued at the last impasse hearing that significant savings could be realized by reducing the outsourcing that has become commonplace in the Water & Sewer Department. A deal was struck in Article 20 of the CBA which would provide a mechanism for the Union to present cost-saving measures to management, and for members of the bargaining unit who have suffered economically to share in those savings. Article 20 of the Collective Bargaining Agreement provides in relevant part that:

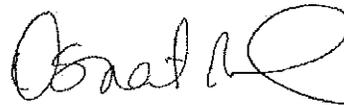
The parties agree to implement performance-based compensation projects involving bargaining unit classifications. These Performance-based Compensation Projects shall be a collaborative effort between the County and the Union to effect meaningful performance-based productivity gains that are designed to enhance the effectiveness and efficiency of the Department. There will be a committee established to review Performance Based Compensation Projects, which shall be comprised of equal amounts of representatives from each of the parties as mutually agreed upon. Union representatives shall be appointed by the Union President.

The parties agree to work together to develop additional criteria to the gainsharing program through a memorandum of understanding (MOU) within ninety (90) days following the ratification of this

agreement. In the event the parties fail to develop a MOU, the parties shall submit their dispute over the terms of the MOU to the County Commission for resolution in accordance with the provisions of Fla. Stat. Chapter 447.

The Union has gone well beyond the 90-days contemplated in the Agreement and has still been unable to reach an agreement with the Administration on the terms of the MOU. The process has been especially frustrating because despite having a contractual obligation to do so at Article 21 of the CBA, the Department has failed and refused to provide the Union with its written recommendations to contract out services, or even with notice whenever the Department is considering contracting out bargaining unit work. In fact, the Union has made specific requests for records regarding outsourcing pursuant to Fla. Stat. § § 119 and 447, part II, that have gone unanswered. The Department's breach and refusal to provide public records has already resulted in the filing of a grievance, and may result in further legal proceedings. Each day that passes adversely affects the Union's ability to make cost-saving proposals relating, *inter alia*, to the Department's on-going practice of outsourcing bargaining unit work, and reduces the amount of savings that could be generated from that process, a loss to both the County and its employees. It is unfair to ask the members of the bargaining unit to wait any longer to share in the anticipated savings. Accordingly, the Union is declaring impasse.

Sincerely,



Osnat K. Rind

Cc: Emilio Azoy, Union President
Carlos A. Gimenez, Mayor
Commissioner Barbara Jordan
Commissioner Jean Monestime
Commissioner Audrey Edmonson
Commissioner Sally A. Heyman
Commissioner Bruno A. Barreiro
Commissioner Rebeca Sosa
Commissioner Xavier L. Suarez
Commissioner Lynda Bell
Commissioner Dennis C. Moss
Commissioner Javier D. Souto
Commissioner José "Pepe" Diaz
Commissioner Esteban Bovo, Jr.
John Renfrow, Director, WASD
Cecilia Brewer-McDuffie, WASD
Eric Rodriguez, ACO
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July 9, 2012

VIA FACSIMILE – 305-375-5883

Joe Martinez, Chairman
Miami-Dade County Commission
111 NW 1st Street, Suite 320
Miami, Florida 33132

RE: AFSCME Local 121 - Gainsharing MOU Impasse – Request for Time Certain
Presentation at Commission Meeting on July 17, 2012

Dear Chairman Martinez:

As you know this firm represents AFSCME Local 121 in the above referenced matter. By this letter we hereby request a time certain presentation at the Commission Meeting on July 17, 2012 between the hours of 10:00 a.m. to 3:00 p.m. AFSCME Local 121 will require 90 minutes for their presentation. Please advise what time we will be presenting this issue to the Commission. Thank you.

Sincerely,



Mark Richard

MR/mjm
Cc: Emilio Azoy

15

