



**MEMORANDUM**

Supplement to:  
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:** Supplemental information to  
Public hearing and vote of the  
Commission to resolve labor impasse  
between Water & 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 sponsor has requested that the attached (AFSCME Local 121's impasse proposal) be added to the agenda package for this item.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/jls

# AFSCME Local 121 Proposal July 14, 2012

## 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 is entered to pursuant to Article 20 and 21 of the CBA.

#### II. TERM

This MOU shall become effective upon ratification and shall be incorporated into the parties' Collective Bargaining Agreement.

#### III. SCOPE

This agreement contemplates defined efficiency projects relating to the performance of bargaining unit work in-house as opposed to outsourcing the work, with a financial savings goal (defined as the cost or projected cost of outsourcing the work or project), comparable standards, and performance measures. The agreement includes performance-based Gainsharing in conformance with the Countywide Gainsharing Guidelines specifically incorporated herein. This agreement includes projects that the union will be able to bid and/or propose to perform with existing WASD employees, with or without the use of part-time and/or temporary workers. The Department agrees to give any Efficiency Project proposal submitted by Local 121 full and fair consideration. The Union agrees to proffer project or work specific proposals using this MOU as a model, which shall contain performance targets, goals and criteria that are specific to that project. The Employer agrees to act in good faith by aiding in the development of such project-specific proposals, and that it shall not delay, hinder, or obfuscate the development of any such proposal, nor withhold any information relating to the work or which may be relevant to the development of performance targets, goals or criteria.

##### A. Efficiency Project

An efficiency project is defined as achieving financial savings above the financial savings goal through the use of WASD employees, with or without the use of part-time and/or temporary workers. The Union may proffer proposals on work or projects that the Department is proposing or contemplating to bid to outside vendors or contractors, as well as work that is currently being performed by outside vendors or contractors, or which

may be performed by outside vendors hereafter. In accordance with the CBA, the Department will continue to provide the Union with advance notice whenever it is considering contracting out bargaining unit work and shall first discuss the contemplated outsourcing with the Union. The Department shall provide the Union with all documentation relating to the contemplated work or project in a prompt manner so that the Union has sufficient time to formulate a proposal, which (in the absence of an emergency) shall be at least twenty days. The documents provided shall include any applicable requisitions or other documents that show the estimated costs associated with outsourcing the work, broken down between parts and labor, and the Department's estimated cost of performing the work in-house, broken down between parts and labor. The Department shall also inform the Union of any perceived impediments to performing the work in-house, if any.

The Department shall provide the Union with any additional documents it requests in order to formulate a proposal. Due to the volume and frequency of requests for outsourcing goods and services, including the submission of requisitions, upon ratification of this MOU the Employer shall assign one (1) bargaining unit employee, selected by the Union President, to work on ways to achieve the goals contemplated by this agreement, and to aid in the formulation of Union proposals on a 24 month trial basis. Thereafter the costs of that employee shall be paid from the the savings pool . The employee shall have working space and appropriate resources including a laptop computer with wireless internet capability, wireless Internet provided, a scanner, access to a copy machine, a County Vehicle to travel to various work locations to review or retrieve records, as well as access to the Office of Capital Improvement (OCI) data base and any public records, including any of the information that the Employer is required to provide to the Union under this MOU or the CBA. In addition the Employer shall provide all necessary training to the employee selected by the Union President regarding accessing and retrieving any necessary information from any computer data base. The Union and the Employer recognize that it is in the interest of both parties and the public to improve the efficiency of the Water and Sewer Department. To that end, the Union shall receive five percent (5%) of the Savings pool annually up to a maximum of \$400,000 annually for its efforts to improve the efficiency of the Water and Sewer Department.

The Department shall, on a monthly basis, provide the Union with a list of all bargaining unit work outsourced during the preceding month.

#### **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. The Union will endeavor to include performance measures and performance targets in its proposals.

A savings pool shall be created and will be the amount saved by performing the work with in-house staff vs. the cost of or projected cost of outsourcing. The scope of work and cost must be a comparable comparison of the cost proposed by a vendor or/contractor, cost projected by the Department, or actual charges incurred by WASD, for the same work. A written proposal for the same scope of work must be provided by the union. The union must also accept any terms and conditions, including timelines and extensions of such timelines, that are relevant and applicable to its bargaining unit arising out of contract requirements or past practice provided such terms and conditions do not violate the parties' CBA.

In the event the financial saving goal with respect to any particular proposal is not achieved, as determined by the committee, and the failure is directly and solely attributable to the acts of the bargaining unit employees performing the work, then the cost in excess of the financial savings goal will be charged against the savings pool, provided that the Department has given the Union advance notice in writing that its projected cost of the work or project will not be met, and provided that the Department has not contributed to the projected failure by among other things, failing to provide the employees with all necessary parts, tools, equipment, materials, or time to complete the work/project. Such notice must state the reasons for the projected failure and must be given far enough in advance to give the Union the opportunity to try to remedy the projected failure. In no event shall anyone, including but not limited to the Union or its bargaining unit members, be responsible for paying a negative balance in the savings pool. Cost overruns not solely and directly attributable to the acts of the bargaining unit employees performing the work shall not be charged against the savings pool, including but not limited to acts of God or other conditions or circumstances beyond the employees' control.

### **C. Savings Pool**

In accordance with the CBA, a Local 121\_savings pool shall be created, which is the total of net savings in excess of the contractor/vendor projected or proposed cost (prorated by the percent of total Local 121 Departmental labor costs.) A maximum of 25 % of the savings pool shall be made available for distribution as employee Gainsharing bonuses to eligible employees, consistent with the provisions of the County's Gainsharing Guidelines and another 5 % shall be for the union for its efficiency efforts described in III A above.

## **IV. ADMINISTRATION OF AGREEMENT**

### **A. Proposal and Evaluation Process**

In instances where an Outside Work requirement is identified by the Department or an efficiency concept is raised by the union, the Department shall notify the union of its intent to issue a solicitation for contract services, or alternatively the union will contact

the Department to share its project concept. Thereafter, the Department shall: a) meet with the union to ascertain if the bargaining unit has the expertise to perform the required non-managerial labor tasks, b) help develop a project scope including cost estimates, and c) work with the union to ascertain whether Local 121 intends to seek to have the job done in-house and further provide Departmental assistance in designing such a bid response.

The parties agree that consistent with the terms of the Collective Bargaining Agreement, a committee is hereby established to discuss and evaluate Local 121's proposals to perform work pursuant to this MOU. The committee shall be comprised of three individuals selected by the Department and three individuals selected by the Union, who shall meet promptly and without delay whenever the Union wishes to make a proposal to have work performed in-house. The committee may be guided in its evaluation by the procedures described in the Department's Employee Recognition Program for Efficiency Savings and Process Improvement. The Department shall give full and fair consideration to any proposal made by the Union, and shall not reject any proposal without a legitimate basis. In the event the Department rejects a proposal proffered by the Union, the Department shall at the time of such rejection provide the Union with a detailed explanation of the basis for its decision, including any and all documents that the Department considered, reviewed, or relied on in deciding to outsource the work, activity or project.

#### **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 AFSCME Local 121, 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 determine the amount of savings, if any, available for distribution in accordance with the CBA. It will be the responsibility of WASD to gather and maintain accurate records under this MOU.

Meeting the 90-day deadline may 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; provided, however, that if it is determined that bargaining unit employees are entitled to additional distributions from the savings pool, such distributions shall be made immediately upon completion of the final audit

#### **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 Employee Distribution**

A maximum of 25% of the savings pool will be available for employee Gainsharing under this agreement, consistent with the Collective Bargaining Agreement and any Countywide Gainsharing Guidelines specifically incorporated herein. Gainsharing employee awards will be capped at \$5,000 per employee, per year.

**E. Employee Eligibility**

All AFSCME Local 121 bargaining unit employees will be eligible for Gainsharing under this MOU provided they meet the rules in this MOU and that the financial savings goals associated with the program 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, probationary), and be members of the bargaining unit represented by AFSCME Local 121.

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 during the applicable fiscal year (the "Gainsharing period") 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 Gainsharing period are eligible for the time spent in the WASD.

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, including leave without pay, but not including as a result of disciplinary action, will have their distributions prorated to reflect the portion of the Gainsharing period in pay status. Furlough days shall not count as out of pay status for purposes of this MOU.

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

**a. Counseling:**

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

**b. 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 the applicable fiscal 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.

**F. Uncontrollable Events**

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.

**Uncontrollable Events:**

For the purposes of this MOU, the performance targets may be adjusted by agreement of the parties in response to events and circumstances beyond WASD's or the employees' reasonable control. These include extraordinary forces of nature such as droughts, floods, washouts, major storms, hurricanes, and other acts of nature, changes of law or circumstances beyond the control of the department or employees.

**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 contract between Miami-Dade County AFSCME Local 121. All rights and benefits of the parties under existing and future labor contracts are preserved. Any labor disputes related to the collective bargaining agreement shall be resolved through the applicable use of established processes within the labor agreement

in effect at the time of the dispute. This MOU shall be enforceable pursuant to the grievance and arbitration procedure set forth in the CBA.

**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**

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: