

M E M O R A N D U M

TO: Town Commission
FROM: Maggie Mooney, Town Attorney
REPORT DATE: November 14, 2019
HEARING DATE: November 20, 2019
SUBJECT: Impasse Hearing between the Town's Management Team and SWFPBA

Impasse Hearing Process Pursuant to Sec. 447.403, Florida Statutes

Part II, of Chapter 447 of Florida Statutes sets forth the processes by which public employees may organize, negotiate collective bargaining agreements, and resolve disputes between public employees and employers arising from those negotiations. More specifically, Section 447.403, Florida Statutes (F.S.) sets forth the process public employers and employees should follow to resolve disputes relating to terms and conditions of employment within a collective bargaining agreement when the parties have reached an impasse during negotiations. In such impasse situations, the statute provides that the parties will appointment a special magistrate to hold hearings to: define the areas of dispute, determine the facts relating to the dispute, and render a decision on unresolved contract issues. See, F.S. § 447.403(3). At the conclusion of the evidentiary hearing, the special magistrate is empowered to issue a recommended decision including findings of fact. *Id.* If either party (the public employer or employee organization) does not accept the recommended decision of the special magistrate, then the special magistrate's recommended decision is forwarded to the legislative body along with recommendations submitted by the chief executive officer and the employee organization for settling the disputed impasse issues. See *id.* at § 447.403(4). The statute then provides that a public hearing is held before the legislative body where the parties explain their positions relating to the rejected recommendations of the special magistrate. The legislative body is then empowered to take "such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues." F.S. § 447.403(4)(d). A copy of the Florida Statutes 447.403 is enclosed.

The Stipulated Impasse Hearing Process for November 20, 2019

The Town Commission will be conducting a modified impasse public hearing provided for in F.S. § 447.403. The Town Commission will conduct a public hearing to consider two (2) issues that the Town of Longboat Key and the Southwest Florida Police Benevolent Association ("PBA") could not reach agreement on. The Town's Management Team and PBA representatives negotiated for several months over a Collective Bargaining Agreement (CBA) to replace the existing CBA which expired on September 30, 2019; however, the parties were unable to reach an agreement on two (2) issues of: (1) retirement and (2) wages. In accordance with the Public Employee Relations Commission (PERC) rules and Florida Statutes, Chapter 447, Labor Organizations, an impasse was declared relating to those two (2) issues. The PBA elected to request a public hearing before the Town Commission and waive the appointment of a Special Magistrate as outlined by Florida Statutes.

Accordingly, the Town Commission as the Town's legislative body will not have a Special Magistrate recommendation to consider at the upcoming Impasse Hearing.

Nevertheless, the Town Commission will hear argument, testimony, and the presentation of evidence by both the Town Management and the PBA representatives on the two (2) issues of impasse. Once each party concludes their presentation, then the Town Commission must take such action as the Town Commission deems to be in the public interest (including the interest of the public employees involved) to resolve all disputed impasse issues.

Attorney Reynolds Allen will be representing the Town's Management. Attorney Caroleen Brej will be representing the PBA. Mr. Allen and Ms. Brej agreed to the following procedure for the impasse hearing conducted before the Town Commission:

1. Each party shall be entitled to make a brief opening statement as to each issue.
2. As to each issue considered at the hearing:
 - a. The Employee Organization shall present first on both issues, followed by the LBK's presentation on both issues.
 - b. Each party shall have up to 45 minutes per issue to present its case-in-chief through its counsel, witnesses and exhibits.
 - c. Each party shall have a reasonable period of time to cross examine and question the other party's presenters and witnesses.
 - d. Each party shall be afforded 15 minutes per issue for rebuttal.
 - e. Commissioners may ask questions and make comments at any time upon recognition by the Mayor.
3. The time limits set forth above may be extended by the Commission at its discretion.
4. Following the presentation of all evidence, each party will be entitled to present its closing argument as to both issues.
5. The Town Commission will then decide both issues and when its decision will become applicable.

Based upon the parties stipulation through legal counsel, the hearing procedures outlined above were subsequently memorialized in an Impasse Resolution Prehearing Order dated October 15, 2019, that was executed by Mayor Spoll and transmitted to the parties. On November 13, 2019, Town Management and the PBA exchanged exhibits that they intend to utilize at the Impasse Hearing. Copies of those marked exhibits will be provided to each Town Commissioner.

Finally, the Impasse Hearing before the Town Commission will be conducted in the Town Commission Chambers and will be open to the public. Following presentations and closing arguments by Town Management and the PBA, the Town Commission should be prepared to render a determination on the issues of retirement and wages that the Town Commission deems to be in the public interest.

If there are any questions about the anticipated hearing process, please do not hesitate to contact me directly.

Attachments (Available in the Town Clerks Office)

- A. Florida Statutes § 447.403
- B. Impasse Resolution Prehearing Order, dated October 15, 2019

End of Agenda Item