



# City of Palm Coast

305 Palm Coast Pkwy., NE  
Palm Coast, FL 32137  
www.palmcoastgov.com

## Meeting Minutes Special Council Meeting

*Mayor Jon Netts*  
*Vice Mayor Jason DeLorenzo*  
*Council Member David Ferguson*  
*Council Member William Lewis*  
*Council Member Bill McGuire*

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Friday, August 29, 2014

10:00 AM

Council Conference Room

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### LOCAL 4807 IMPASSE HEARING

**Jim Landon, City Manager**  
**Jeff Mandel, Attorney for City Manager**  
**City Staff**  
**William Reischmann, Attorney for City Council**  
**Virginia A. Smith, City Clerk**

>Public comment on issues on the agenda or public participation shall be limited to 3 minutes.

>If any person decides to appeal a decision made by the City Council with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made.

>The City of Palm Coast is not responsible for any mechanical failure of recording equipment.

>Other matters of concern may be discussed as determined by City Council.

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>City Council Meetings are televised on Brighthouse Networks Channel 199.

>All pagers and cell phones are to remain OFF while City Council is in session.

#### **A. CALL TO ORDER**

*Mayor Netts called the meeting to order at 10:04 a.m.*

#### **B. PLEDGE OF ALLEGIANCE TO THE FLAG**

#### **C. ROLL CALL**

*City Clerk Virginia Smith called the roll. Council Member Bill Lewis was excused.*

**Present:** 4 - Mayor Netts, Vice Mayor DeLorenzo, Council Member Ferguson, and Council Member McGuire  
**Excused:** 1 - Council Member Lewis

## **PUBLIC HEARING**

**This proceeding is open to the public to observe, but it is a labor proceeding with specific statutory requirements and only the two parties, the City Manager and the Firefighters will make a presentation to the City Council.**

**Each party will be afforded forty-five (45) minutes to present their positions on the disputed impasse issues. In order to allow each party to fully make their presentations, the City Council Members will hold any questions until the end of each party's presentation. The City Manager will be called upon first and the Firefighters will be called upon next. Upon the conclusion of the presentations by both parties, the City Council Members will have an opportunity to ask any final questions, receive any citizen comments, deliberate, and then vote on resolution of the impasse issues.**

*Attorney Reischmann read the instructions of the proceedings into the record.*

- 1      [14-318](#)      PUBLIC HEARING PURSUANT TO SECTION 447.403, FLORIDA STATUTES, TO RESOLVE THE IMPASSE IN LABOR NEGOTIATIONS BETWEEN THE CITY OF PALM COAST AND THE LOCAL UNION 4807 FOR THE BARGAINING UNIT THAT CONSISTS OF PROFESSIONAL FIREFIGHTERS

**Attachments:**      [City Manager's Recommendations to Resolve Impasse](#)

## **D. INTRODUCTION OF PARTIES TO THE CITY COUNCIL**

*Mayor Netts introduced the parties.*

## **E. PRESENTATION BY CITY MANAGER-NOT MORE THAN 45 MINUTES**

*Attorney Mandel presented for the City Manager.*

*Attorney Mandel requested the City Clerk alert him at 30 minutes, so he can reserve 15 minutes for rebuttal.*

*Attorney Mandel rested and has preserved 25 minutes for rebuttal.*

## **F. PRESENTATION BY FIREFIGHTERS-NOT MORE THAN 45 MINUTES**

*Attorney Richard Siwica presented on behalf of Local 4807.*

*Attorney Reischmann-Article 23 clarification*

*Attorney Siwica reserved 13 minutes for rebuttal.*

**G. REBUTTAL BY CITY MANAGER-REMAINDER OF 45 MINUTES**

*Attorney Mandel presented a rebuttal.*

*City Manager, Jim Landon presented a brief rebuttal.*

*Attorney Mandel presented further rebuttal.*

**H. REBUTTAL BY FIREFIGHTERS-REMAINDER OF 45 MINUTES**

*Attorney Siwica presented rebuttal.*

**I. PUBLIC PARTICIPATION**

*Prior to opening the meeting for public participation, Attorney Reischmann provided a summary to Council regarding the 3 issues for Council to resolve.*

*Article 14.11 same as Article 24-Council can make 1 decision on those two articles.*

*Article 23 Prevailing rights (Past practices).*

*Attorney Mandel-Poland Springs language, would request to argue on that language.*

*Attorney Siwica-"Discipline must be for just cause" written in Article 14.11. Attorney Reischmann clarified further and then Attorney Siwica reverted back to the arbitrator's decision.*

*Article 14.11 clarification of City Manager's recommendation. Attorney Mandel-see page 11*

*CM McGuire-When would the contract expire? Ans: Attorney Mandel-September 15, 2015.*

*Public Participation-*

*Larry Ruggieri-Retired in 2011 from the Fire Dept. Unionizing and benefits- why are they unionizing.*

**J. CITY COUNCIL DELIBERATION**

*CM McGuire-Prevailing rights (past practices). No job security without the union. You can train in City or County and when you acquire the skills, you can then throw hat in for another municipality and receive more pay than what the City or County pays. Just cause? Options are available to the Union to pursue grievance. In private sector-Arbitration was avoided at all cost because the loser of the arbitration is paid for by the loser and the arbitrator can rule any way they please.*

*VM DeLorenzo requested an explanation of past practices. Attorney Mandel provided an overview of past practices-under the Florida Public Employees Relation Act as interpreted by the Florida Public Relations Commission, a past practice is something that has existed for an unequivocally existed for a substantial period of time, such as the employees could reasonably expect that to continue into the future. That is the standard the courts use.*

*VM DeLorenzo requested an overview of Poland Springs provision. Ans: Attorney Mandel-What Poland Springs would do is that they would agree to put in a provision that states essentially the arbitrator finds the person committed the violation that they*

are charged with that the disciplinary action cannot be overturned; the level of disciplinary action could not be overturned, foremost it is illegal for you to impose that-the parties can agree to it but you cannot legally impose that.

CM Ferguson-Clarification of "just cause" is it something beyond Appendix A? What does "just cause" buy for both sides? Is it strictly the issue of management losing?  
Ans: Attorney Siwica-There are two levels to this issue, one, when an employer disciplines need to make sure it is done properly, in a way that makes sense, then you get to the issue of substantively what is just cause? Just cause simply is there is no guaranteed definition of just cause, but over the many decades that employers have been using it and have become familiar with it, there are certain principles that have been developed. For example, you cannot fire an employee for violating a rule they never heard of, you may be able to do a lesser penalty but you cannot fire an employee for doing something for a rule you never heard of except if the behavior is obvious, then you do not need a rule. That is one important piece to it. Another important piece to it is you can't fire if you have the wrong guy. Can't fire someone for "x" when the past 30 employees have done "x." No guarantee that will not occur, other than he is a nice guy.

CM Ferguson-Does just cause guarantee arbitration? Ans: Attorney Siwica-You will always have a right to go to arbitration if there is a provision in your contract that substantively limits the employer's ability to discipline.

Mr. Landon-This is part of my job responsibility. It is based on our personnel policies. It is City policy, your policy. This proposal would take it out of the hands of City policy and put it in the contract; anything you put in the contract can go to binding arbitration. We do not have a problem with a just cause provision, what we have a problem with is the binding arbitration which gives us very limited authority to appeal the bad decision that we think we have a good chance at appealing. The idea behind this is that just cause should stay in our personnel policies, your policies, and not be placed in the contract that then takes the whole issue out of your hands. I could use the same argument as Mr. Siwica; it is very difficult to get anything out of a contract once it is in. But I can tell you that if they ever presented the case to City Council, this one, one in the future, that says we violated that principle, that we were not giving them their fair due, I would tell you that you need to put it in the contract to make sure that happens, but until that happens our current process works. Our current process keeps it within the City policy versus a third party, one individual who decides the fate of given case. It seems fairer to not take that management right away, that process away from us and turn it over to an outsider.

CM McGuire-Isn't the grievance process the just cause issue? Ans: Mr. Landon-Correct. Mr. Siwica-These people are here for a reason, to get "just cause" in the contract.

Mayor Netts-Has had an opportunity to sit on both sides of the table in bargaining units, seen process at work, the concern that I have and pretty well has been set forth, in arbitration there is a similar word 'arbitrary' You are taking one person and that person has virtually unlimited control over the decision making process. Granted we can debate the issues of cost and which is more expensive but the reality is that the union has the opportunity to appeal the City's decision but then we also have that opportunity. So I am reasonably comfortable with the status quo with regard to disciplinary action, grievance ensures fairness to both parties. The issue of past practice is vague. If there is an existing practice that is not in the contract that is important, then put it in the contract.

**K. CITY COUNCIL'S MOTION AND VOTE ON THE RESOLUTION OF THE ISSUES AT IMPASSE**

*Attorney Reischmann  
3 issues  
Article 14.11, 23, 24.*

*Motion for Article 14.11 and 24-  
CM McGuire made a motion which was seconded by VM DeLorenzo to reject the  
Special Magistrates recommendation for Article 14.11 and Article 24.  
Motion passed unanimously.*

*Motion for Article 23  
CM McGuire made a motion which was seconded by VM DeLorenzo to reject the  
Special Magistrates recommendation for Article 23. Motion passed unanimously.*

Motion for Article 14.11 and 24-  
CM McGuire made a motion which was seconded by VM DeLorenzo to reject the Special Magistrates  
recommendation for Article 14.11 and Article 24.

Motion passed unanimously.

Motion for Article 23  
CM McGuire made a motion which was seconded by VM DeLorenzo to reject the Special Magistrates  
recommendation for Article 23.

Motion passed unanimously.

**L. ADJOURNMENT**

*The meeting was adjourned at 12:15pm*

*Respectfully submitted,  
Virginia Smith, City Clerk*

[14-322](#)

**ATTACHMENTS TO MINUTES**

**Attachments:**     [Siwica email to Council](#)  
                                 [Ltr to Council re Impasse Proceedings](#)