

# III. 1.

Clearwater, Florida, December 2, 2010

The Unified Personnel Board (UPB) met in regular session at 6:33 P.M. on this date in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida, with the following members present: Daniel M. Andriso, Chair; Joseph Smith, Vice-Chair; Lounell C. Britt; Ricardo Davis; James P. Koelsch; George E. Tragos; and Robert Angus Williams.

Also Present: Peggy Rowe, Director of Human Resources; Robert C. Swain, Senior Assistant County Attorney; Tammy L. Burgess, Deputy Clerk; and other interested individuals.

## AGENDA

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| EAC             | <u>Item I. Employees' Advisory Council Representative</u>  |
|                 | <u>Item II. Consent Agenda</u>   |
| Human Resources | 1. Request Approval of the Minutes of the Regular Personnel Board Meeting held November 4, 2010.   |
| Human Resources | 2. Request Approval of Housekeeping Revisions of Class Specifications in the Pay and Classification Plan.  |
|                 | <u>Item III. New Business</u>  |
| Human Resources | 1. Request Approval of Revisions to Personnel Rule XI, Standard Workweek, Overtime Compensation, and Standby Assignments.                              |
|                 | <u>Item IV. Old Business</u>   |
| Utilities       | 1. Appointing Authority's Motion for Reconsideration and, alternatively, Proposal of Alternative Discipline in the Termination Appeal of Valrie Jones. |

## CALL TO ORDER

Chairman Andriso called the meeting to order at 6:33 P.M.

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Deviating from the agenda, Chairman Andriso recognized the upcoming retirement of EAC Chairman Paul Rogers and presented him with a plaque in appreciation of his years of dedicated service.

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EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE

Mr. Rogers related that tonight's UPB meeting will be his last, as he is retiring in February 2011. He discussed the role of the EAC and indicated that due to the current economic crisis, the EAC's position has changed to protecting and serving the classified system, noting that it has been and will remain an advocacy group.

Mr. Rogers expressed concern that employees serving on the EAC are not being afforded ample time to attend the meetings; and related that the EAC will be meeting with the appointing authorities on Monday to discuss the issue, as well as training opportunities, the new performance evaluation system, and preserving the Florida Retirement System, pointing out that due to the reduction in workforce, some employees are being denied training opportunities that may adversely affect them seeking a promotion; and that since there will be no merit or cost of living increases, employees with good evaluations should receive one to two days off.

CONSENT AGENDA ITEMS NOS. II. 1 THROUGH II. 2 – APPROVED

Motion - Mr. Smith  
Second - Mr. Davis  
Vote - 7 – 0

- #1 Minutes of regular meeting held November 4, 2010, approved.
- #2 Housekeeping revisions of class specifications in the Pay and Classification Plan approved; changes reflect the current duties and responsibilities of the classifications, are housekeeping in nature, and will not affect the pay grade level of the classifications.

NEW BUSINESS

PROPOSED REVISIONS TO PERSONNEL RULE XI, STANDARD WORKWEEK, OVERTIME COMPENSATION, AND STANDBY ASSIGNMENTS – TABLED UNTIL JANUARY UPB MEETING

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Chair Andriso indicated that a memorandum has been received from Ms. Rowe, a copy of which has been filed and made a part of the record, recommending that the Board amend Personnel Rule XI. A., to provide that beginning March 18, 2011, all employees will have their pay directly deposited in a financial institution of their choosing or through a payroll debit card issued by the County.

In response to queries by Mr. Tragos, Ms. Rowe explained that several years ago, the Board approved a Rule change that required all newly hired employees to have their payroll direct deposited and grandfathered employees who were still receiving an actual paycheck; and that the proposed Rule change provides that, effective March 18, 2011, all employees will be required to either have direct deposit or receive a debit card from Wachovia Bank for their payroll, noting that the change will affect approximately 75 to 76 employees; and that there will be no cost to the employee for the debit card; whereupon, in response to queries by Chair Andriso, Mr. Rogers indicated that the proposed Rule change was discussed at the EAC meetings; and that the EAC has no objections.

Mr. Tragos expressed concern that employees may be charged in the future for the debit card and suggested that a provision be added to the Rule stating there is no cost to the employees at any time; and Chair Andriso expressed concern regarding the bank charging fees that are out of the control of the County, and Mr. Rogers provided input.

Ms. Rowe indicated that she will follow-up with the Finance Department to determine if there is a contract with the bank preventing it from charging employees at any time in the future; whereupon, following brief discussion, Mr. Tragos moved, seconded by Mr. Smith and carried, that the item be tabled until the next UPB meeting.

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APPOINTING AUTHORITY'S MOTION FOR RECONSIDERATION AND, ALTERNATIVELY, PROPOSAL OF ALTERNATIVE DISCIPLINE IN THE TERMINATION APPEAL OF VALRIE JONES – DEFERRED TO JANUARY UPB MEETING

In response to query by Chair Andriso regarding whether he can vote on the current proceeding since he was not in attendance at the prior hearing, Attorney Swain indicated that pursuant to Florida Statute 286.012, the Chair is required to cast a vote, unless there is a direct financial conflict.

In response to query by Mr. Tragos, Attorney Swain provided information relating to the process by which a motion for reconsideration is heard, and noted that the request will only be granted if the proposed modification or amendment is based upon evidence previously presented or upon newly discovered evidence which by due diligence could not have been discovered prior to the formal hearing, and a showing is made that the Board's decision was made through or based upon fraud, collusion, deceit, or mistake of fact or law; whereupon, he pointed out that the basis of the motion for reconsideration is a mistake of fact or law.

Following discussion, Mr. Tragos moved, seconded by Mr. Davis and carried, that the motion for reconsideration be deferred to the January UPB meeting to allow Ms. Jones ample time to review the motion and prepare her response.

Mr. Tragos questioned whether the County Attorney's Office prepared the motion for reconsideration on behalf of the appointing authority and indicated that the Board regularly rules that there is no conflict with the County Attorney's Office's representation, noting that the potential for conflicts exists; and that the Board has the right to question the County Attorney's Office's involvement. In response to comments and queries by the members, Attorney Swain indicated that a public records request would not reveal, at this point in time, who prepared the document; and that questioning whether the County Attorney's Office prepared the motion suggests some animus toward the County Attorney's Office; whereupon, he urged the Board not to continue with the line of questioning, as it may find that the County Attorney's Office is present in all of the appeals; and related that the Board needs to address the issue with County Attorney James L. Bennett if it chooses to challenge the County Attorney's Office.

In response to Attorney Swain's assertion that the question invades the attorney/client privilege, Mr. Tragos stated that documents prepared with the intent to be made public are not privileged; and questioned whether Attorney Swain is defending the appointing authority and thereby in a conflict situation; whereupon, Chair Andriso indicated that the Board will take Attorney Swain's advice, that the question is improper, into consideration.

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Mr. Tragos moved, seconded by Mr. Smith, that the Board ask the County Administrator's Office if the County Attorney's Office prepared the motion for reconsideration on its behalf.

Discussion ensued regarding whether the answer to the question would provide any benefit to the Board in relation to the case before it, whether a potential conflict of interest exists, and the potential need for the Board to decide how to handle situations where the County Attorney's Office prepares documents on behalf of the appointing authority when the employee is unrepresented. Mr. Tragos related that he is unable to make an intelligent decision as to whether a conflict or potential conflict exists without having all the facts; and questioned the harm in knowing whether the County Attorney's Office prepared the document or not.

During discussion and in response to comments by Mr. Tragos, Attorney Swain clarified that neither party was represented by an attorney at the previous hearing before the Board; and Mr. Tragos related that the issue of whether the County Attorney's Office prepared the motion for reconsideration is more pertinent. In response to query by Mr. Davis, Mr. Tragos related that knowing whether the County Attorney's Office prepared the motion for reconsideration would tell the Board whether there is an attorney opposing a civilian, rather than two civilians, as was the case at the previous hearing, and would allow the Board to understand and take into consideration the different levels of expertise and sophistication of each party; whereupon, Chair Andriso stated that the Board always gives the benefit of the doubt to individuals not represented by an attorney, especially when one side has an attorney.

Discussion ensued regarding whether the disparity in the levels of sophistication of the arguments impacts the outcome of the case and in response to query by Mr. Smith, Attorney Swain recommended that the Board not discuss the contents of the motion for reconsideration if the matter is going to be continued; whereupon, Mr. Smith opined that there is an element of fairness that needs to protrude.

Mr. Tragos related that he is only asking whether the County Attorney's Office prepared the motion, not who prepared the motion. Attorney Swain stated that he did not prepare the motion; and that he had no input in drafting the motion, if it was prepared by the County Attorney's Office, noting that he has not spoken to anyone regarding the case; whereupon, Attorney Swain indicated that had the issue been raised prior to tonight's meeting, Attorney Bennett could have been present to address the question.

Thereupon, upon call for the vote, the motion passed by a vote of 4 to 3, with Chair Andriso and Messrs. Koelsch and Williams dissenting.

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In response to query by Chair Andriso, Interim Director of Utilities Kevin Becotte indicated that Assistant County Administrator Mark S. Woodard signed the motion on behalf of County Administrator Robert S. LaSala; that he does not know who prepared the motion; and suggested that the question be deferred to the next meeting when Assistant County Administrator Mark S. Woodard could attend and respond to the question; and Attorney Swain suggested that Attorney Bennett also attend the next UPB meeting to address the issue; whereupon, Mr. Tragos pointed out that the Board voted to ask the question; and that it expects an answer.

This proceeding has been electronically taped and made a part of the record.

MISCELLANEOUS INFORMATION ITEMS RECEIVED

The following miscellaneous information items were received for filing:

1. Management and Supervisory Notes for December 2010.
2. Training Schedule for December 2010.
3. Minutes of the EAC Representatives meeting of October 20, 2010.

ADJOURNMENT

The meeting was adjourned at 7:27 P.M.

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Chair