

II. 2.

Clearwater, Florida, November 3, 2011

The Unified Personnel Board (UPB) met in regular session at 6:28 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; and Joan Vecchioli.

Not Present: George E. Tragos.

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

AGENDA

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| EAC | <u>Item I. Employees' Advisory Council Representative</u> |
| | <u>Item II. New Business</u> |
| Human Resources | 1. Request Approval to Repeal Personnel Rule XV, County Service Optional Exchange of Leave. |
| Human Resources | 2. Request Approval of Revisions to Personnel Rule XVI, A.4, Leave of Absence, Funeral Leave. |

CALL TO ORDER

Chair Andriso called the meeting to order at 6:28 P.M.; whereupon, he led the members and attendees in the Pledge of Allegiance to the Flag.

EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE

EAC Chairman Charles E. Toney reported that at the most recent EAC meeting, Keith Dekle had been elected to serve as one of the two EAC appointees to the UPB and would be replacing Mr. Smith; whereupon, on behalf of the EAC, Mr. Toney expressed his appreciation to Mr. Smith for his years of service and dedication, and indicated that a formal thank you would take place at the December meeting.

Mr. Toney reported that he had attended the Pinellas County Legislative Delegation meeting; that one of the roles of the Delegation is to represent Pinellas County employees with regard to the Florida Retirement System (FRS); and that he had encouraged the Delegation members to support bills which would provide an incentive for early retirement as opposed to penalizing an employee for taking an early retirement; whereupon, Mr. Toney provided information regarding the Florida Education Association (FEA) and its legal challenge to the recent retirement system changes concerning the mandatory three-percent employee contribution to the FRS and the new method of calculating retiree cost-of-living-adjustments, and indicated that the Judge hearing the case appeared to be in agreement with the FEA.

Mr. Toney indicated that if the Judge were to rule in favor of the FEA, Pinellas County Government would most likely be required to refund its employees' contributions; and that because the three percent savings realized by the County has been placed into a Stabilization Fund, those dollars would be available to reimburse the employees. He reported that discussions had taken place in Tallahassee regarding what the outcome would be should the Judge rule against the FEA; that the State is considering keeping the three percent savings rather than sending it to the counties; and that the EAC would prefer the funds remain with the County if the contributions are to continue; whereupon, Mr. Toney related that he had reminded the Legislative Delegation that Pinellas County employees are hard working individuals who are part of the local community and volunteer, vote, and help their communities in many ways.

Thereupon, Mr. Toney briefly discussed the proposed changes to the exchange of annual leave and funeral leave policies, and thanked Ms. Rowe for informing the EAC prior to bringing those changes before the UPB for action; whereupon, he presented information regarding last month's termination appeal, and expressed disappointment that the information received before the meeting differed from the testimony given under oath at the hearing; and suggested that a more formal pre-hearing process be instituted.

NEW BUSINESS

Attorney Swain presented information regarding the termination of appeal of Richard Schneider that had taken place approximately one year ago. He advised that Mr. Schneider has filed an appeal with the Second District Court of Appeals; that the case is now in a Second Tier Certiorari Review; and that the members are still obligated to observe the Cone of Silence and the Sunshine Laws, which continue to apply.

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Chair Andriso indicated that Item No. 2 would be heard at this time.

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REQUEST FOR APPROVAL OF REVISIONS TO PERSONNEL RULE XVI, A.4, LEAVE OF ABSENCE, FUNERAL LEAVE – APPROVED

Chair Andriso indicated that a memorandum has been received from Ms. Rowe requesting approval of revisions to Personnel Rule XVI, A.4, Leave of Absence, Funeral Leave, as outlined in her memorandum dated October 27, 2011, a copy of which has been filed and made a part of the record; whereupon, Mr. Smith moved, seconded by Mr. Davis, that the request of Ms. Rowe be approved.

Ms. Rowe provided a summary of the Leave of Absence policy relating to Funeral Leave, and indicated that the EAC has requested that if additional time for Funeral Leave is granted by the Appointing Authority, the additional time be considered as scheduled leave. She indicated that there have been occasions where employees have requested that additional leave be added to their Funeral Leave request; and that even though the employees were granted the time, it was coded as unscheduled.

In response to queries by Messrs. Koelsch and Davis, Ms. Rowe explained the implications of an employee receiving unscheduled versus scheduled leave, and indicated that for those employees who have a borderline attendance issue, having additional unscheduled leave could place them at risk for a disciplinary action; and that the revised language would eliminate the possibility of an employee being charged with unscheduled leave for an approved absence.

Thereupon, upon call for the vote, the motion to approve the request of Ms. Rowe carried unanimously (Vote 6 – 0).

REQUEST FOR APPROVAL TO REPEAL PERSONNEL RULE XV, COUNTY SERVICE OPTIONAL EXCHANGE OF LEAVE – APPROVED

Chair Andriso indicated that a memorandum has been received from Ms. Rowe requesting approval to repeal, effective November 11, 2011, Personnel Rule XV, County Service Optional Exchange of Leave, as outlined in her memorandum dated October 28, 2011, a copy of which has been filed and made a part of the record.

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Ms. Rowe reported that Human Resources recently discovered that the current exchange of leave program could have negative tax consequences to the County and its employees. She related that upon receiving advice from the County Attorney's Office and outside tax attorneys, she is requesting that Personnel Rule XV be repealed; and that in conjunction with the repeal and in order to mitigate the impact of the changes on employees and the County, she further recommends that the Board support one additional opportunity for leave exchange to be granted to employees in 2011.

Ms. Rowe provided background information regarding the item and discussed the term "constructive receipt." She reported that when an employer such as Pinellas County Government provides funds which can be accessed by employees at a future date, the employer is required to have very restrictive guidelines with regard to the employees' ability to access those funds; and that due to constructive receipt, the potential exists that all County employees who have access to those funds could be taxed on those funds whether they accept them or not; whereupon, she indicated that in order to provide time for Human Resources staff and County employees to better understand the changes, no exchange of leave would be offered during Calendar Year 2012; and that during Calendar Year 2012, Human Resources would be developing an exchange of leave program to be implemented in January 2013.

Thereupon, Ms. Rowe provided further information regarding the December exchange of leave which would be set for pay date December 9, 2011; and related that it would be an opportunity for employees to elect additional hours of leave for exchange and conversion to cash, or deposit into a County-sponsored Section 457 Plan if they did not exchange the maximum amount under Rule XV in November 2011. Ms. Rowe indicated that the maximum exchange amounts listed in Rule XV shall apply to the combined November and December 2011 exchanges; that such exchange would be available to any employee regardless of his or her accumulated leave balance on the date of the election; and that the County Attorney concurs with the aforementioned recommendations.

Thereupon, Ms. Rowe indicated that, in addition, the County Attorney has expressed concerns that certain areas of the Rules may exceed the Board's authority under the Special Act, including exchange of leave; and that the County Attorney will coordinate with Human Resources and the UPB in the upcoming year to review the Board's rulemaking authority.

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In response to queries by Mr. Davis, Ms. Rowe indicated that the December election would not increase the liability of the County; and that if an employee were to terminate County employment prior to the end of Calendar Year 2013, he or she would realize no tax consequence; whereupon, Ms. Rowe indicated that an employee would not actually be able to receive any funds until those funds are earned.

Responding to queries by Ms. Vecchioli and Chair Andriso, Ms. Rowe confirmed that Human Resources recently discovered the regulation; that the law regarding constructive receipt is not new; that the policy will be changed; that the employees will be informed regarding the irrevocable election requirement, the limits on what can be cashed in, and similar requirements; that the County will limit future exposure by virtue of the policy changes; and that Rule XV will be repealed and completely rewritten.

Thereupon, Mr. Koelsch moved, seconded by Mr. Smith, that the request of Ms. Rowe to repeal Personnel Rule XV and to grant one additional opportunity for leave exchange this year be approved.

In response to queries by Mr. Davis, Senior Assistant County Attorney Carole Sanzeri advised that the item only relates to negative tax consequences and not to a violation of the law.

Upon call for the vote, the motion to approve the request of Ms. Rowe carried unanimously (Vote 6 – 0).

Following the vote, Ms. Rowe, with input by Attorney Sanzeri, pointed out that the memorandum refers to the granting of one additional opportunity for leave exchange during 2011; and requested that the members recognize, for the record, that a second election would take place in December; whereupon, Mr. Davis indicated that the motion included support for the entire recommendation, and no objections were noted.

ADJOURNMENT

The meeting was adjourned at 6:58 P.M.

Chair