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LAWYERS HELPING PEOPLE

July 13, 2009

VIA FACSIMILE AND REGULAR MAIL

Paul D. Fraim, Mayor
City of Norfolk
810 Union Street
City Hall Building, Suite 1001
Norfolk, Virginia 23510

RE: Ordinance Amending and Adopting a Revised Grievance Procedure

Dear Mayor Fraim:

Please be advised that on behalf of a significant number of City employees who I represent as both general and individual counsel, we strenuously object to the adoption of the subject ordinance. Section I.2 which would "require the grievance panel to defer to the discretion of the City Manager in imposing discipline, unless they find no rational basis for it..." is an exercise in simply gutting the grievance procedure to a nullity.

A creature of state law which must be adopted in some form by individual municipalities, the grievance procedure is a well-known tried and true due process check on the discretion of management. Frequently grievance panels determine the facts in such a way as to show that management was erroneous in its assumptions regarding the happening of certain events and the considered collective judgment of panel members is an important due process protection for employees. It is submitted that the ordinance change will not only gut the basis for discipline as imposing a "no rational basis" standard on discipline, thereby requiring a panel to uphold the Department Head, the ordinance provides much less due process protection than state law, creating an issue of Dillon Rule violation and other potential challenge.

This is an obvious attempt to second guess the decision of panels in many cases that have determined to reinstate City employees who were unjustly terminated. In all of these instances, these panels have been chaired by competent members of the Virginia State Bar chosen by both the City and the grievant. These trained lawyers and panel members come to considered decisions based upon the presentation of evidence. To take away their discretion and to impose a "no rational basis" standard will essentially eliminate the grievance procedure in a way not contemplated by the General Assembly or the Virginia Constitution.

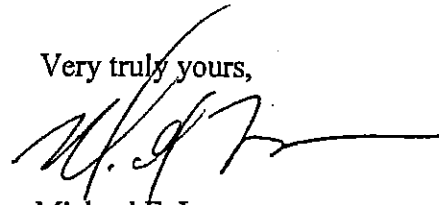
We urge that the existing grievance procedure has worked well for years. Any Department Head, including the Chief of Police, must maturely live with the decisions of panels, which are in place in order to protect employees. Such panels result from a procedure that is a valuable right for City employees and is doubtless a recruiting tool. Once prospective employees find out that any grievance procedure in the City of Norfolk will essentially be rendered a nullity, they certainly would have second thoughts about working in such a system. In addition, grievance panels are empowered to consider many actions of management, to include acts of retaliation covered by civil rights and other federal law. It is suggested that changing the ability of a grievance panel to make recommendations and consider facts when faced with an allegation of a policy violation, disparate application or any act of retaliation in violation of state and federal law, would provide no recourse for the employee who would essentially be bound by the decision of the City Manager. Fact finding would shift from the merits to whether there was a "rational" basis for the action.

§ 15.2-1506 of the Code of Virginia requires the City of Norfolk to have a grievance procedure which affords a "fair method for the resolution of disputes" and §15.2-1507 is very specific in its due process and procedural requirements. In no way does the state grievance procedure contemplate a rubber stamp of the City Manager. It is our position that such an unwarranted change in the existing grievance procedure will cause extensive litigation and do nothing other than destroy morale and essentially gut a time proven and abundantly fair system of airing grievances and challenging certain decisions of management that so qualify.

We will do everything in our power to challenge this action in every appropriate forum and urge its rejection by City Council.

Thanking you, I remain

Very truly yours,



Michael F. Imprevento
Direct Dial #757-670-3884

MFI/dst

cc: Bernard Pishko, City Attorney
Regina V.K. Williams, City Manager
Michael McKenna, President, IBPO Norfolk Local