MEMO

To: Sanibel City Council

FROM: Judith Zimomra, Sanibel City Manager

DATE: November 28, 2012

SUBJECT: Report to City Council on the Issues Raised by Mr. Roy Gibson at the City Council Meetings of September 8, 2012 and September 18, 2012

BACKGROUND

On August 16, 2005 the Sanibel City Council amended the contract with our then health care carriers, Aetna and Jefferson Pilot, to provide for employee plus one coverage to comply with the labor agreement also approved on August 16, 2005. The agreement approved on August 16, 2005 between the City and AFSCME included a provision to provide health, dental and vision insurance domestic partners coverage, if the carriers offered availability to domestic partners.

Since 2005, the City of Sanibel has provided health care benefit eligibility to same sex and opposite sex domestic partners of City employees. This policy allows fulltime City employees to obtain, at their cost, the same health care coverage for a domestic partner that is available for a spouse, provided the insurance carrier provides domestic partner coverage. To establish eligibility the City employee is required to file an affidavit titled "Statement of Domestic Partnership" along with other evidence of relationship. Proof of interdependence must include at least three of the following:

- Common ownership of property
- Common ownership of an automobile
- Driver's License listing common address
- Proof of joint bank accounts or credit accounts

- Proof of designation as the primary beneficiary for life insurance or retirement benefits or primary beneficiary designation under partner's will
- Assignment of a durable property power of attorney or health care power of attorney

Since this policy went into effect two city employees have registered a domestic partner.

In 2011 the request to extend the spousal supplement for health insurance to registered domestic partners was raised by AFSCME. On August 24, 2011, AFSCME's list of bargaining issues to the City included extending the spousal supplement to employees insuring their domestic partners. The City and AFSCME continued to bargain through December 8, 2012.

When the 2011 Employee Benefit Booklet was printed in the Fall of 2011 the booklet included an error. The Director of Administrative Services became aware of the error after the booklet was distributed, but no correction or errata sheet was prepared or distributed. The booklet included language that erroneously extended the spousal supplement to domestic partners. The Director of Administrative Services does recall a discussion with Mr. Roy Gibson at the time the error was discovered explaining that the booklet included the mistake.

On August 31, 2011 Director of Administrative Services Jim Isom and Finance Director Sylvia Edwards each signed off and approved the Employee Benefits Worksheets for all employees . The worksheets were prepared by Human Resource Generalist Ms. Sharon Gibson (no relation to Mr. Roy Gibson). Included in the worksheets was the worksheet for Mr. Roy Gibson, effective October 1, 2011 incorrectly providing him a monthly Spousal Supplement (Dependent Cafeteria Allowance) in the amount of $436.49 per month.

Commencing on September 8, 2011 Mr. Roy Gibson's bi-weekly paycheck included a $218.25 Spousal Supplement. Payment of the spousal supplement continued for six pay periods. The total paid over the six checks was $1309.50. Payment of the spousal supplement was discontinued as of Mr. Roy Gibson's

paycheck of December 1, 2011. In interviewing Ms. Sharon Gibson on this matter on three separate occasions, she has confirmed that she discontinued the payment without authorization. She also confirmed that she did not follow standard City policy to not make any changes to an employee's pay without written authorization as well as advising the employee in writing of the change and the reason for the change.

On December 2, 2011 the City of Sanibel received a written response from Mr. Roy Gibson, in his capacity as President of the AFSCME union, accepting the City's final bargaining offer, which did not include the extension of the spousal supplement to domestic partners.

On January 3, 2012 City Council approved the agreement between the City and AFSCME, which did not include the extension of the spousal supplement to domestic partners.

At the September 8 , 2012 Budget Hearing, Sanibel resident and employee Roy Gibson addressed City Council regarding providing the spousal supplement for his registered Domestic Partner.

The points Mr. Gibson made at this meeting are as follows:

- He was not representing AFCME or any other employees, only his own personal situation
- He is a native Floridian
- He is a 22 year resident of Sanibel
- He is a Sanibel taxpayer
- He expressed his appreciation to City Council for their efforts on the budget
- Like many of his colleagues he finds himself struggling financially
- He is currently making less than he did 6 years ago because of benefit costs
- That City of Sanibel employees are fortunate inasmuch as the City has continued to contain benefit costs
- That he believes he is the first & only City employee with a registered Domestic Partner

- That he pays thousands of dollars more per year for benefits of a Domestic Partner in comparison to an employee who purchases benefits for a spouse
- That even if he is not the only employee the amount to provide this benefit to him and any other like situated employee would be very small as a percent of the total cost budgeted for Health Care costs so as to not require an increase in cost to the City budget

On September 11, 2012 the City of Sanibel received the attached legal opinion from City Labor Attorney Wayne Helsby advising that absent a contractual waiver it would be an unfair labor practice for the City to unilaterally modify the health insurance plan to include payment of a spousal supplement without first negotiating with AFSCME as part of the bargaining process.

At the budget meeting of September 18, 2012 Mr. Gibson raised the following issues:

- That he believes he is a victim of discrimination, persecution and has been victimized
- That he has sought and obtained a waiver from the Union (AFSCME) regarding this matter being the subject of mandatory bargaining
- That he is not seeking the domestic partner supplement for others that his request is solely for Roy Gibson & Roy Gibson alone
- That he is not before City Council to negotiate
- That he was previously promised in the record by City Council that he would not be retaliated against based upon his representation of the Union
- That he had been provided the Domestic Partner supplement and that the discontinuation of the benefit was done to be punitive and was unfair and discriminatory
- Discontinuing his Domestic Partner benefit was not consistent with the City of Sanibel Policy of Marital Status
- That there were no budgetary constraints against providing the benefit
- He was the only one who had been given the benefit in the past that was then discontinued
- That the City of Sanibel took away a coverage that had been provided

As of September 28, 2012 City of Sanibel employees have been advised that our dental plan carrier, Lincoln Financial, and our vision plan carrier, Humana Vision, now recognize domestic partner benefits and that in addition to health insurance City employees can now obtain these benefits for their domestic partners at their expense. Two employees have purchased some level of coverage for their domestic partners.

On November 1, 2012 the City of Sanibel obtained the attached legal opinion from the City Labor Attorney, Wayne L. Helsby, regarding Domestic Health Insurance. Mr. Helsby's opinion states:

"While the City could legally enter into such a waiver with AFSCME, waivers are typically entered into as a part of the bargaining process and incorporated in the parties' collective bargaining agreement. In addition, the City should be aware that providing this type of health insurance benefit would no doubt increase the City's health insurance costs. As such the City may want to consider paying for such a benefit only in exchange for some other concessions from the Union. All of that is a part of the collective bargaining process that, in my opinion, is the appropriate venue for the City to consider this issue."

PROCESS

In the course of preparing this report the records referred to within the report were reviewed, the parties were interviewed individually with the City Attorney present and the audio of Mr. Roy Gibson's presentation was reviewed.

COLLATERAL ISSUES

Since September 8, 2012 the City Attorney and I have met with Mr. Roy Gibson on three occasions to discuss the issues he raised at the City Council meeting. At our first meeting Mr. Roy Gibson raised two additional issues that in his opinion further substantiate his claim of discrimination in the work place. The first issue was that his membership to his professional association, the American Planning Association (A.P.A.), had not been paid when another member of the Planning

Department dues had been paid by the City. His second issue was that his request for a change in title had not been approved.

Mr. Gibson also stated that he had further information that he believed document his statement of workplace discrimination but that he would want further time to consider if it is in his best interest to share this information. In both of the subsequent meetings Mr. Roy Gibson stated that he did not believe that it is in his best interest to share any further information on this topic.

In regard to the first item the records indicate that the City paid Mr. Gibson's APA membership in the amount of $419 last in 2009. Planning Director James Jordan reports that at no time during his tenure as Director, which began in March, 2009, has Mr. Gibson submitted to him a request to have his APA dues paid.

In regard to his request for a title change I advised him that I did receive a request from his Director during the preparation of the current for a title change and promotion of Mr. Roy Gibson to the Position and Title of Assistant Director of Planning. I responded to Director Jordon that over the past decade we have been eliminating the title "Assistant" from our organization in an effort to create a smaller, sleeker organization with less administrative overhead. I also advised the Director I could not support the creation of the title "Assistant" for a Department which has a total of five full-time employees, two of which would be a Director and Assistant Director.

At our third meeting with Mr. Roy Gibson on November 27, 2012, with the City Attorney present, Mr. Roy Gibson raised an issue regarding his personnel file. In this meeting Mr. Roy Gibson raised the concern that he believes records are missing from his personnel file. These are records Mr. Roy Gibson stated that he has copies. When asked the nature of these records Mr. Roy Gibson stated that he did not feel it was in his best interest to share this information at this time. Finally in regards to the APA dues at the meeting of November 27, 2012 Mr. Roy Gibson advised me that through his research that the non-payment of his dues seemed to be a result of the American Planning Association invoicing which co-mingles individual's dues with other services and the direction from a previous Director that services other than Mr. Roy Gibson's dues be paid, such as specialty publications and specialty membership categories. Mr. Roy Gibson reported to

me during our meeting of November 27, 2012 that he has requested a current invoice from APA. Director Jordon has been directed to pay the invoice upon receipt.

FINDINGS

Although administrative errors were made, compounded by the failure of checks and balances, based upon the information that has been presented and reviewed, there is no evidence that the commencement or discontinuation of the spousal supplement for health insurance to Mr. Roy Gibson was done in retaliation or with the intent to discriminate. In all three of my meetings with Ms. Sharon Gibson on this matter, she personally accepted full responsibility for her role in this matter and expressed genuine remorse for the results of her errors.

Based upon the timing of events, as well as the City's distribution of an Employee Benefits Booklet with erroneous information, it is reasonable that an employee situated in the circumstances of Mr. Roy Gibson could conclude that the benefit was discontinued for some reason other than human error. On behalf of the Administration I have personally apologized to Mr. Roy Gibson and by way of this memorandum do so again, in writing.

However, it is also found that based upon the interviews with Mr. Roy Gibson that he did not pursue his administrative remedies in this case. According to his statements he did not at any time make any inquiry to his Director, the Finance Director, and the Director of Administrative Services as to any policy reason why the payment to him of the spousal supplement had ceased. It could also be argued the Mr. Roy Gibson was unjustly enriched in the amount of $1309.50 in payment of benefits for which he was not entitled.

In reviewing the documents and interviewing the involved parties there has been no finding or indication of direction by City Council to discriminate or retaliate against any employee based upon their Union activity, martial or any other status. Let me state in my 11 years as City Manager for the City of Sanibel no Council member has ever directed or implied that we should pursue any policies that would be directly or indirectly retaliatory or discriminatory on any grounds.

FINANCIAL IMPLICATIONS

The current monthly cost to the City to insure a full-time employee's spouse is $615.88 or $7390.56 annually. The City provides each employee who insures a spouse a monthly supplement in the amount of $508.98, or $6107.76 annually. The employee pays the remaining $106.90 per month, or $1282.80 per year, to insure the spouse.

Currently there are two City employees with a registered domestic partner. The unknown factor in determining the financial implications of calculating the spousal supplement to domestic partners is the number, if any, of employees who currently are in domestic partner relationships that have not registered with the City but would be entitled to the benefit if such a benefit was offered.

RECOMMENDATONS

Based upon all of the above, the following recommendations are presented:

- The Finance Department payroll software be upgraded to require two persons to make any changes in the payroll system
- The Director of Administrative Services conduct a job audit of the current duties and responsibilities of the work performed by Mr. Roy Gibson to determine if any updates to his job title, classification or job description are warranted
- Consistent with the advice of our labor attorney, that the issue of extending spousal supplement for health care coverage be considered a topic for negotiations at the commencement of discussions in preparation for entering the next agreement with AFSCME
- Mr. Roy Gibson not be required to reimburse the City in the amount of $1,309.50

Attachments

- November 1, 2012 Legal Opinion
- September 14, 2012 Waiver
- September 11, 2012 Legal Opinion

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REPLY TO: Winter Park

http://twitter.com/anbluw

November 1, 2012

Mr. Jim Isom
Administrative Services Director
City of Sanibel
800 Dunlop Rd.
Sanibel, Florida 33957

Re: Domestic Partner Health Insurance
Our File No.: 1390.000; 1(O)

Dear Jim:

This is a follow up letter to my previous correspondence to you dated September 11, 2012, regarding the issue of domestic partner health insurance. In my previous letter, I opined that the issue of the City providing to AFSCME represented employees domestic partner health insurance fully paid for by the City is a mandatory subject of bargaining which, absent a waiver by AFSCME, could not be unilaterally implemented by the City. Since that time, it is my understanding that the City has received correspondence from AFSCME indicating that it is willing to execute a waiver, and permit the City to unilaterally implement a domestic partner health insurance plan fully paid for by the City. While the City could legally enter into such a waiver with AFSCME, waivers are typically entered into as a part of the bargaining process and incorporated in the parties' collective bargaining agreement. In addition, the City should be aware that providing this type of health insurance benefit would no doubt increase the City's health insurance costs. As such, the City may want to consider paying for such a benefit only in exchange for some other concession from the Union. All of that is a part of the collective bargaining process that, in my opinion, is the appropriate venue for the City to consider this issue.

I trust that I have been responsive to your inquiry. Let me know if you have any questions.

Sincerely,

Wayne L. Helsby

Wayne L. Helsby

WLH/km
349535

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Jim Isom

From: Irwin Scharfeld <jms-24@hotmail.com>
Date: September 14, 2012 9:32:31 AM EDT
To: Jim Isom <Jim.Isom@mysanibel.com>
Cc: Roy Gibson <islandroy@aol.com>, Hector Ramos <hramos@afscmefl.org>
Subject: AFSCME waiver

Jim, this will serve to notify the City of Sanibel that AFSCME is prepared to sign off on a waiver as stipulated in Wayne's reply to you regarding employee/City resident Roy Gibson's request concerning Health Insurance coverage of his domestic partner. Please prepare the necessary document for AFSCME's signiture so that is can be executed as soon as possible. Your cooperation in this matter is appreciated. Irwin

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REPLY TO: Winter Park

http://twitter.com/anblaw

September 11, 2012

Mr. Jim Isom
Administrative Services Director
City of Sanibel
800 Dunlop Rd.
Sanibel, Florida 33957

Re: Domestic Partner Health Insurance
Our File No.: 1390.000; 1(O)

Dear Jim:

You have asked me to provide an opinion letter regarding the City's obligation to negotiate with AFSCME a request from a City employee to enhance the City's health insurance program by including a provision that would have the City pay the cost of premiums for employees who elect to have health insurance coverage for domestic partners.

By way of background, AFSCME is currently the certified bargaining agent for a group of City employees, and has negotiated a number of collective bargaining agreements with the City over the past several years. In the prior two sets of negotiations for successor agreements, AFSCME has included proposals relating to domestic partner health insurance. Currently, the City's health insurance plan is such that employees may elect to have domestic partners covered, but the employee must incur the premium expense for such coverage. AFSCME has proposed in the last two sets of negotiations that the City incur the cost of the premiums for such coverage. The City has not agreed to these proposals.

Most recently, the City and AFSCME have engaged in negotiations for a successor agreement for the 2012-13 fiscal year. As a part of AFSCME's proposals to the City, it once again requested that the City absorb the premium cost for domestic partner insurance. The City declined to do so. All other issues between the City and AFSCME were resolved and the bargaining unit employees ratified the successor agreement. Immediately prior to the City Council considering ratification of the Agreement, a City employee addressed the City Council and requested that the City consider, outside of the bargaining process, modifying its insurance plan to include payment of premiums for domestic partner insurance for those employees who

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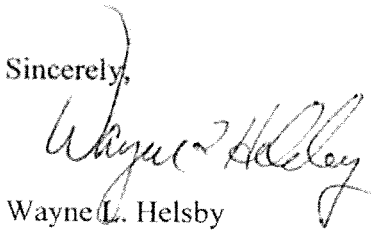
elect such coverage. The question is whether the City could legally modify its insurance plan to include payment for such coverage without first negotiating this enhancement with AFSCME.

The law in Florida is clear that the issue of employee health insurance is a mandatory subject of bargaining. International Union of Painters and Allied Trades, Local 1010, AFL-CIO v. City of Sweetwater, 31 FPER ¶ 52 (2005); Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union No. 173 v. City of Sarasota, 29 FPER ¶ 87 (2003). Absent a contractual waiver, in my opinion the City would commit an unfair labor practice by unilaterally modifying its health insurance plan to include payment of premiums for the domestic partner health insurance benefit without first negotiating such a change with AFSCME. Any such change would first need to be negotiated with AFSCME as a part of the bargaining process.

I trust that I have been responsive to your inquiry. Let me know if you have any questions.

Sincerely,



Wayne L. Helsby

WLH/km