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PROVISIONS IN THE BARGAINING AGREEMENTS (10/01/07 – 09/30/10) THAT AFFECT THE CIVIL SERVICE RULES & REGULATIONS

Recently, all four union contracts (AFSCME-Local 1907, AFSCME-Local 871, Fraternal Order of Police-Lodge 20, and IAFF-Local 587) were ratified by the City Manager and as a result, provisional changes were made that affected some employees' (particularly the general and solid waste employees) coverage under the Civil Service Rules. Whenever there is a provision in the Civil Service Rules that is also included in a bargaining agreement, the bargaining agreement will prevail. As a service to our customers, we now identify some of those changes and address how they affect application of the Rules.

PROBATION EXTENSION – Since its inception, the Civil Service Board was the sole entity authorized to extend an employee's probationary period beyond the prescribed time limit; however, this responsibility has changed slightly for employees who fall under the AFSCME-Local 1907 union contract. Article 18.3 of this contract now states that for **permanent, full-time, classified employees serving in a probationary promotional appointment**, requests for extensions of probationary periods shall be forwarded to the **Director of Employee Relations (ER) for approval**, not to Civil Service. Departments that have questions regarding the process can contact the Office of Labor Relations. Requests for extension of probationary periods involving other employees including, managerial/confidential employees, members of the Fraternal Order of Police (FOP) and members of the International Association of Fire Fighters Unions will be forwarded directly to the Civil Service Board Office for processing. For instructions on how to prepare requests for extension of probationary periods, you may visit our web-site at www.ci.miami.fl.us, by clicking on **City Organizations, Civil Service, Newsletters**, and then select appropriate bulletin.

In accordance with Article 16.5 of the AFSCME-Local 1907 Agreement, **probationary employees who were appointed to a position but who did not complete the required probationary period** may be discharged or demoted any time prior to the expiration of the probationary period. In such cases, the employee shall not be accorded a hearing before the Civil Service Board.

Also, note that Article 15.2 of the Solid Waste contract indicates that **extensions of probationary periods** are not reviewable or appealable to the Civil Service Board nor grievable under the bargaining agreement, but shall only be subject to review by the Department Director of Employee Relations or his/her designee whose decision shall be final and binding on the employee and the Department.

Additionally, Article 16.7 of the AFSCME-Local 871 Agreement states that permanent, classified employees who are **returned to their former classification prior to completing the required probationary period** shall not be accorded a hearing before the Civil Service Board or the grievance procedure.

HEARING REQUESTS – Civil Service Rule 16, GRIEVANCES and ABUSES, and Rule 17, PROHIBITED PRACTICES, allow employees to request hearings regarding complaints they may have. Be reminded that while the union contracts (AFSCME-Local 1907 / Article 14.14 and AFSCME-Local 871 / Article 7.3) state that **requests for hearings under Civil Service Rules 16.2 and 17 will be denied if specific Civil Service Rules are not cited as the basis of their complaint**, this stipulation applies to all persons filing under these Rules as well as requests for investigations pursuant to Rule 16.1.

Sometimes we may forget which matters the Civil Service Board can and cannot entertain especially since both the Civil Service Board and the Arbitrator (Grievance Procedure) handle hearings requested by City employees. For your convenience and edification, we have extracted from the contracts a limited number of provisions for which the Board has no jurisdiction and they are as follows:

AFSCME-Local 1907 (General Employees):

Article 17.1 (3) - **Employees absent for a period of three workdays without notification of a valid reason** may be considered to have resigned their employment with the City of Miami. Such actions are not subject to review by the Civil Service Board, but shall only be reviewed, if applicable, by the City Manager, Department Director of Employee Relations, or a designee.

Article 29.3 - **Employees who do not have a medical waiver and are required to wear safety shoes**, but fail to do so shall be subject to the loss of a day's pay for each day that the employee reports to work not wearing the required safety shoes. If disciplinary action becomes necessary, such action shall not be appealable to the Civil Service Board.

Article 35.1 – Any questions with regard to **employee parking** shall be reviewed and a determination made by the Department of Employee Relations designee and shall be final.

Article 38.1 / 38.2 – **The Police Chief at his sole discretion may reject an employee to an assignment within the Miami Police Department when the Chief has reason to believe that there is potential for the security of the department to be compromised.** Upon request of the Union President, the Department of Employee Relations' designee will review such denial of assignment. Said review will be final and the decision of the Department of Employee Relations' designee will be binding and not subject to any appeal procedure.

Article 40.3 - **Employees who are disciplined pursuant to the tardiness schedule**, such disciplinary actions are not appealable to Civil Service, but only through the Grievance Procedure Article as set forth in the bargaining agreement.

Article 41.3 - Whenever an **employee's request for leave of absence without pay is denied** by the Director of Employee Relations and the employee desires redress on the action taken, such requests shall not be appealable to the Civil Service Board.

AFSCME-Local 857 (Solid Waste):

Article 5.4 – **Any and all employees who violate any provisions of the law prohibiting strikes** or of this Article may be dismissed or otherwise disciplined by the City, and any such action by the City shall not be grievable or arbitrable under the provisions of the bargaining agreement or appealable to the Civil Service Board.

Article 7.4 – The Union agrees and understands that **employees failing to make an election of remedy at Step 2 of the Grievance Procedure** that the grievance would be conclusively abandoned with no other recourse or appeal to Civil Service.

Article 26.3 – Grievances related to **working out of classification** issues are only appealable through the grievance procedure and not the Civil Service Board.

Article 34.2 – **Approval for leaves of absence without pay** is at the sole discretion of the City Manager or Director of Employee Relations and shall not be appealable to the Civil Service Board or the grievance procedure.

Article 36.5 – **Disagreements with any change of shift time** may be appealed to the City Manager or his designee whose decision will be final and binding upon the parties.

Article 37.7 – An employee's **refusal to submit to a request for an alcohol or drug test** under this Article shall be grounds for dismissal. Disputes arising out of such orders that result in discipline shall be arbitrable under Grievance Procedure.

Article 37.19 – If an employee is terminated for **failure to meet the requirements of rehabilitation** as described herein, **or who test positive for a third offense for controlled substance or alcohol during or after the rehabilitation period** shall have no appeal rights through Civil Service, the grievance procedure or any other forum.

Article 44.2 – Following the review of an accident, **if the Accident Review Committee concludes that the accident was preventable and will result in disciplinary action**, then the decision may be grieved in accordance with Article 7, Grievance Procedure, **but not Civil Service**.

Both Agreements:

Article 14.3 / Article 7.2 - **Oral and written reprimands, warnings, and deficiencies** shall not be considered grievable under the Civil Services Rules. Although this specific language only appears in the bargaining agreements for general AFSCME (Article 14.3) and Solid Waste (Article 7.2) employees, it applies to all classified employees since the Civil Service Rules allow for an appeal before the Board only when an employee is dismissed, demoted, suspended or fined.

Please remember to contact us at the number listed below if you have any questions or are unsure whether your complaint should be remedied through the Civil Service Rules or the contract.