

Lawless, Chair
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Ellinger
Farmer
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McChord
Henson

A G E N D A

Special Public Safety & Public Works Committee

April 19, 2011
1:30 P.M.

1. Public Safety Collective Bargaining Agreements (1-6)
2. Items Referred to Committee (7)

“Public Safety & Public Works Committee, to which shall be referred matters relating to the Department of Public Safety and its related divisions; the Department of Public Works and its related divisions, including capital improvement projects and any related partner agencies.” Council Rules & Procedures, Section 2.102 (1) Effective January 1, 2011. Adopted by Urban County Council October 14, 2010

Committee Meeting Schedule

May 10
July 12
September 20
November 15



Lexington-Fayette Urban County Government
DEPARTMENT OF LAW

Jim Gray
Mayor

Janet M. Graham
Commissioner

TO: Ed Lane, Councilmember
FROM: Department of Law
DATE: March 24, 2011
RE: Collective Bargaining Agreements

In response to your request, this memorandum reviews the law applicable to the execution of collective bargaining agreements on behalf of the urban county government. Specifically, the roles of the urban county council and mayor in that process will be discussed.

The Lexington-Fayette Urban County Government ["LFUCG"] was created by Charter, as authorized by KRS Chapter 67A. As you know, the executive and legislative functions are divided between a mayor and council.

Section 3.02(25) of the Charter provides that the "merged government" (LFUCG) shall have the authority: "To enter into contracts and agreements with other governmental entities and also private persons, firms, and corporations with respect to furnishing services." Section 5.04(E) provides that the Mayor: "Shall sign all written contracts or obligations of the Merged Government and administer all capital improvement projects authorized by ordinance." Since adoption of the Charter, these provisions have always been interpreted to require that all contracts be executed by the LFUCG mayor, but only after approval of the same by ordinance or resolution adopted by the council.¹

This division of authority and interpretation is consistent with the way cities in Kentucky operate. The statutes applicable to both the mayor-council form and the mayor-commission form of city government contain very similar language. See KRS 83A.130(8); KRS 83A.140(4). Also of interest is the Kentucky League of Cities' *City Officials Legal Handbook*, which outlines the roles of a Kentucky city's mayor and council. It designates setting contract specifications and approval of contracts as legislative (council) rather than executive (mayor) functions. While neither KRS

¹ Although the Council has historically approved each contract separately in most instances, this does not preclude it from adopting legislation that gives the Mayor the authority to execute certain contracts without the need for the individual approval of each.

Chapter 83A nor the "city" officials' handbook applies directly to an "urban county government" these sources support the historic interpretation of the urban county charter.

LFUCG has had collective bargaining for public safety employees since the legislature adopted KRS 67A.6901 *et seq.* in 2004. The statutes originally provided for collective bargaining only for police and fire officers and bargaining for corrections officers was added in 2006.

Because this legislation includes language pertaining to the approval of collective bargaining agreements (CBA), the relevant statutory provisions must be interpreted to determine whether the above-described process is not required. The specific statute that must be interpreted is KRS 67A.6908, which reads as follows:

- (1) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties.
- (2) **An agreement between the urban-county government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the urban-county government or his or her representative.** No publication thereof shall be required to make it effective. The procedure for the making of an agreement between an urban-county government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers, firefighter personnel, firefighters, or corrections personnel represented by a labor organization.
- (3) Suits for violation of agreements between an urban-county government and a labor organization representing police officers, firefighter personnel, firefighters, or corrections personnel may be brought by the parties to the agreement in the Circuit Court of the urban-county government.

(emphasis added.)

The first LFUCG collective bargaining agreements were negotiated in 2005. Because KRS 67A.6908 makes no mention of the Council in the approval process, the Department of Law advised then that approval of the agreements by the Urban County Council was unnecessary. As a result all prior collective bargaining agreements have been signed by the Mayor without Council approval.

In 2008, when the second CBAs for police and fire were negotiated, issues arose about the authority of the Mayor to execute the agreements without Council approval. The Department of Law advised both the Mayor and the Council that it disagreed with the earlier interpretation of KRS 67A.6908 because, while the statute could be clearer, any differences between the charter and statutes could be reconciled by having the Council approve the CBAs once negotiated by the Mayor and the union and approved by the membership. The fire and police unions disagreed with the Department of Law and Christopher Bartley, President of the Lexington Professional Firefighters IAFF Local 526, requested an opinion on the issue from the Kentucky Attorney General.

The Department of Law based its position on the historic interpretation of the division of legislative and executive authority in LFUCG's charter as supported by the practice in other Kentucky cities. Further support for that position was found in the process followed in Louisville, where collective bargaining has been permitted for Louisville employees for many years. The Louisville approval process is as follows:

- 1) Negotiations are undertaken by representatives of the union and the government, which negotiations are subject to a confidentiality agreement.
- 2) After negotiations are completed, the CBA is presented to the "rank and file" employees for a vote on ratification.
- 3) If the CBA is ratified, it is presented to the legislative body for approval. If the membership disapproves the CBA, it is returned to the negotiators for further negotiation.
- 4) Typically, the proposed CBA is sent to a committee for review and a presentation explaining the CBA is made.
- 5) After the committee review is complete, a recommendation is made to either approve or disapprove the CBA and a vote of the entire legislative body is taken.
- 6) If the legislative body approves the CBA the Mayor executes it and it becomes effective. If the legislative body disapproves the CBA, it is returned to the negotiators for further negotiation.

As you can see, the metro council in Louisville has no involvement in the collective bargaining process until a proposed agreement is reached. Further, to be consistent with the statute, when the CBA is presented, the council cannot alter the terms of the agreement but must simply vote to approve or disapprove, just like the membership. If either the union or the council rejects the contract, renegotiation is undertaken.

Ground Rules agreed upon and used during all previous LFUCG negotiations are consistent with Louisville's process. Under these rules all CBAs are "tentative" until a final proposed agreement is reached and approved by the necessary parties.

Therefore, updates during the negotiations are misleading since matters tentatively agreed upon can be changed based on subsequent discussions by the negotiating representatives.

The relevance of Louisville's longstanding process is underscored by the recent legislation providing for "metro government" in Jefferson County. In 2004, the same year that collective bargaining was authorized for LFUCG, KRS Chapter 67C, providing for creation of a "metro government" in a county with a first class city, was adopted. KRS 67C.400 *et seq.*, which provides for collective bargaining for Louisville police officers, is essentially identical to 67A.6901 *et seq.* and contains KRS 67A.414(2), which corresponds to 67A.6908(2), and states:

(2) An agreement between the consolidated local government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the consolidated local government or the mayor's representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between a consolidated local government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers represented by a labor organization.

(emphasis added.)

The highlighted language mirrors KRS 67A.6908. KRS Chapter 345, which applies to fire officers in Louisville, contains similar language. It is significant to note that none of these collective bargaining statutes mention the legislative body or the union membership in regard to execution of CBAs. They simply state that the mayor shall execute the collective bargaining agreements, which is consistent with the urban county charter and the above-cited statutes applicable to all cities, and are silent on union approval. It is also important to note that to our knowledge no court has ruled that Louisville's approval procedure was improper under its statutes.

As you are aware, when the issues arose in 2008, the Department of Law proposed that a procedure similar to the "Louisville model" be adopted by Council resolution. Based on the opposition from union representatives and others the Council at that time declined and the Mayor did not press the matter. Later, on January 29, 2009, the Attorney General's office responded to President Bartley's opinion request. No formal Opinion was issued but the question was addressed in a letter, a copy of which is attached.

The Attorney General's Office opined that based on the language in KRS 67A.6908, the mayor could negotiate and sign CBAs without council approval. However, the Attorney General's letter contains fundamental assumptions that are contrary to the Department of Law's legal analysis. For example, it states that the "executive authority of an urban county government is vested in the mayor pursuant to KRS 83A.130(3)", a statute applicable only to cities. The letter also refers to LFUCG's legislative body as a "city" council demonstrating the lack of appropriate analysis of KRS Chapter 67A and the urban county charter. However, there are portions of the Attorney General's letter which are instructive

The Attorney General's letter concludes that KRS 67A.6908 would not prevent the Mayor from seeking the council's approval of CBAs, either by negotiating it into a CBA or just seeking the advice of the Council prior to their execution. Thus, nothing in the AG's letter would preclude adoption of the "Louisville process" or a similar process by the urban county government.

Based on the above discussed authorities, the better course for the urban county government would be for the council to approve collective bargaining agreements just as it does any other LFUCG agreement. This particularly makes sense based on the significant fiscal impact caused by collective bargaining agreements.

It must be acknowledged, however, that the language of KRS 67A.6908 does support an argument that Council approval is not necessary before a Mayor signs an LFUCG collective bargaining agreement. Notwithstanding that, and even assuming that argument would carry the day, if an LFUCG Mayor wanted to obtain input from the council prior to signing a CBA he can do so. Both the statutory language and the Attorney General's letter support that conclusion.

It is hoped this information is helpful.


 Edward W. Gardner
 Attorney Sr.

Enclosure

cc: Mayor Jim Gray
 Richard Moloney, CAO
 Council Office

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RESOLUTION NO. _____-2008

A RESOLUTION ESTABLISHING THE PROCEDURE FOR APPROVAL OF COLLECTIVE BARGAINING AGREEMENTS BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the procedure for approval of collective bargaining agreements by the Lexington-Fayette Urban County Council, be and hereby is established as follows:

- a. The Mayor, or his designees, shall negotiate collective bargaining agreements pursuant to KRS 67A.6901 *et seq.*
- b. Upon approval of a negotiated collective bargaining agreement by the membership of the collective bargaining unit, the Mayor shall submit a copy of same to the Urban County Council. The Mayor shall also submit a statement reflecting differences between the proposed agreement and the current agreement and a statement reflecting the budgetary impact of the proposed agreement during its term.
- c. The Urban County Council shall consider the proposed collective bargaining agreement, which consideration may include the questioning of the negotiators for the Government and the collective bargaining unit.
- d. On or before the third regularly scheduled Council meeting subsequent to receipt of the proposed agreement, the Urban County Council shall, by resolution, either accept or reject the same.
- e. In the event the Urban County Council fails to act within the above deadline, the Mayor be, and hereby is, authorized to execute the agreement on behalf of the Government.

Section 2 - That this Resolution shall become effective on the date of passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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Committee Referrals

Public Safety/Public Works Committee Items Referred

Item	Referred By
Review & Sign Off of Collective Bargaining Agreements	Lane
Collection of Donations In Street Intersections	Lawless
Update on Fire Organization	Crosbie
Update on Corrections Reviews Including Sheriff Review	Crosbie
Update on E911 Review	Crosbie
Paramedic Training: Emergency Medical Advisory Board (EMAB)	Gorton
Fire Disciplinary Process	Lawless
Re-paving Program	Martin
Todds Rd Widening Project Phase II	Stinnett
Newtown Pike Project	Blues
Taxicab Ordinance	Lawless
Itinerant Merchant	Henson
Residential Parking Permits	Lawless
Sidewalk Specifications	Feigel
Erecting Large Utility Poles on ROW	Martin
Re-Paving List	Lawless
Emergency Snow Plan	James
Loading & Unloading Zones in Downtown	James
Horse Cruelty	Beard