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November 21, 2005

Mr. Tyrone Bujold
Minneapolis Charter Commission
117 Portland Ave., #602
Minneapolis MN 55401

RE: Revised Charter – Draft 8

Dear Mr. Bujold:

My firm represents the Minneapolis Board of Business Agents (“MBBA”), the organization consisting of the leadership of the various labor unions that represent people employed by the City of Minneapolis and its Independent Boards (Park and Recreation Board, Library Board, and Public Housing). On behalf of the MBBA, I had previously exchanged correspondence with Brian Melendez regarding earlier versions of the proposed restatement of the Minneapolis Charter. Many, but not all of the comments and concerns of the MBBA were addressed in earlier drafts up through Draft 6. My last correspondence to Mr. Melendez was dated December 30, 2004 regarding Draft 6.

I have obtained and reviewed Draft 8. I was disappointed to find that none of the items referenced in my December 30, 2004 correspondence to Mr. Melendez were addressed in Draft 8. On behalf of the MBBA, I did attend the Charter Commission meeting on November 2, 2005, and am aware that you were named the chair of a subcommittee to address the concerns of the Park and Recreation Board and the Library Board prior to the December Commission meeting. I am writing to you to request that your subcommittee consider the concerns of the Union leaders set forth below and that I be afforded an opportunity meet with the subcommittee to discuss these concerns of organized labor prior to the Commission’s December meeting.

The primary concern with the language of Draft 8 relates to the reference to superseding special laws. As you may know, there are countless special laws that directly impact the hiring and

For example, one such law is the Special Law that requires that the City fill a vacancy from among the top three candidates ranked by their Civil Service examination scores. For the last several years, and again for the 2006 Session, the City has approached organized labor to gain its support in seeking a change to this law at the Legislature that would allow the City to hire anyone who passed the exam. To date, Labor has not supported this change and has recently advised City leaders that we will oppose their proposed language for legislation that was presented to us for review prior to inclusion in the City's formal legislative agenda for 2006. An effort by the City to circumvent the legislative and collective bargaining processes by attempting to repeal this Special Law through the Charter restatement process would clearly cause Labor to cry "foul" and fight against the entire restatement in addition to seeking available legal remedies.

This problem could be alleviated if the language of Section 1.3(c)(1) were amended to read:

Except as expressly provided herein, this charter supersedes only a special law, or portion thereof, that is inconsistent with a provision of the charter as it existed prior to this revision and provided such special law was enacted prior to the most recent amendment of the inconsistent charter provision.

Most of the other concerns by the Board of Business Agents are less onerous, but nevertheless still important. They are as follows:

1. Section 9.4(a)(2)(A) – Appointed Positions in Fire Department. The prior charter contained specific language in Chapter 7, Section 5 that required that appointed positions, other than the chief, be filled by appointment from among Minneapolis fire fighters having attained the rank of Captain. The new language contains no such requirement that the appointed positions be filled from within the Department. This is a substantive change that directly diminishes the promotional rights of current Minneapolis fire fighters and, therefore, is highly objectionable to the leadership of the International Association of Fire Fighters, Local 82.

2. Section 9.4(a)(3)(B) – Layoffs in Fire Department. The new language allows for layoffs that "least impair" the efficiency of the fire department. The prior language of Chapter 7, Section 5 allowed for layoffs "as can be [done] without impairing the efficiency of the Department." Changing from language "prohibiting impairment" to "minimizing impairment" is substantive and, in light of recent attempts to layoff fire fighters, is also objectionable to the leadership of Local 82.

3. Section 10.5 – Classified Service. The process for hiring involves the posting and administration of a competitive examination, grading of the exam, preparation of a list based on the ranking of the exam results, and then certifying to the agency seeking to fill a vacancy the names of the people eligible to be hired. The proposed language of Section 10.5 does not reference the certification process. This language would best fit within the powers of the Civil Service Commission enumerated in Section 10.5(c)(1)(C) as set forth below.

4. Section 10.5(c)(1)(C) – Eligibility List. The proposed language of this section does not provide for an expiration date for the eligibility list. Chapter 19, Section 7 of the Charter currently provides that an eligibility list will expire after two years.¹ The Civil Service Commission may act to extend the list (for example, in the case of a hiring freeze). The failure to include an expiration date in the charter provision adversely impacts the promotional rights of employees. Unless a list expires, it will remain in effect until all names are exhausted thereby precluding promotion to any employee who did not pass or was not eligible to take the exam from which the list was prepared. The present system of allowing promotional examinations at least every two years must be retained. The employing agencies also benefit from having a periodic turnover of names of the list thereby giving them fresh options to fill vacant positions. The language necessary to preserve the status quo is set forth in the proposed revision to Section 10.5(c)(1)(C).

PROPOSED LANGUAGE

- (C) must administer or provide for the administration of a competitive examination after giving public notice for each job in the classified service, and
 - i. maintain an application register of each applicant for examination, listing the job sought; and
 - ii. maintain an eligibility register based on the results of the examination which shall remain in effect for not more than two years, unless extended by the Commission; and
 - iii. certify to the department seeking to fill a vacancy the list of candidates from the eligibility register who may be selected.

5. Section 10.5(d)(4)(B) – Discharge. The proposed language of this section precludes discharge “except for cause.” The present language of the Charter, the Minnesota Public Employee Labor Relations Act, case law and applicable collective bargaining agreements provides for discharge only upon “just cause.” Whether there is a difference between “cause” and “just cause” may be debatable, but there seems little reason to even have the debate. The language of Section 10.5(d)(4)(B) should be amended to preclude discharge except for “just cause.”

6. General Comment – in many places throughout the document, an obligation or prohibition presently contained in the Charter is substituted for authority of the City Council to

¹ The Civil Service Commission may act to extend the list for certain purposes, such as in the case of a hiring freeze.

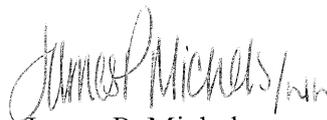
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act by ordinance. This constitutes a major substantive change in that it allows for a change of policy upon the affirmative vote of seven Council members instead of the unanimous action by all thirteen that would be required to change a Charter provision.

The MBBA is comfortable that the remaining provisions of the restated charter preserve the essential rights of employees and obligations of the employer with regard to hiring, promotion and terms and conditions of employment that are contained in the present charter.

Obviously, it is not necessary for us to meet to discuss the seven specific concerns of organized labor referenced herein if the Charter Commission is amenable to making the requested changes. However, if you have concerns or questions that prevent you from recommending such changes, I look forward for the opportunity to discuss them with you. Because time is short prior to the Charter Commission's December meeting, I will clear my schedule to be available whenever you can meet. Please contact me or my assistant, Heidi Husbyn, to schedule a meeting if one is necessary. Thank you for your consideration.

Sincerely,



James P. Michels

cc: Charter Commission Members
Minneapolis Board of Business Agents Members
Assistant City Attorney Burt Osborne