



**Request for City Council Committee Action
From the City Attorney's Office**

Date: October 24, 2007
To: Ways and Means/Budget Committee
Referral to: None
Subject: Representation of the City by Felhaber Larson Fenlon and Vogt in Interest Arbitration involving AFSCME Council 5, Attorney Unit

Recommendation: That the City Council consent to Felhaber Larson Fenlon and Vogt's representation of the City in the arbitration between the City and AFSCME Council 5, Attorney Unit, and authorize the proper City Officials to enter into a legal services contract with the Felhaber law firm for such representation.

Previous Directives:

Prepared by: Jay M. Heffern, City Attorney Phone: 673-3272
Approved by: Jay M. Heffern
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the ___ Capital Budget or ___ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: ___ Action is within the plan. ___ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

- Neighborhood Notification
- City Goal(s):
- Comprehensive Plan
- Zoning Code
- Other

Background/Supporting Information

AFSCME Council 5 represents the Attorney Unit in the City Attorney's Office. The Collective Bargaining Agreement between the City and AFSCME Council 5, Attorney Unit expired on December 31, 2006. The City engaged in contract negotiations and contract mediation; however, the parties have been unable to reach an agreement on a new contract. AFSCME Council 5 has requested that the Bureau of Mediation Services declare that an impasse has been reached and certify the matter for binding arbitration. Attached is a letter from Jill Kielblock, Business Representative for AFSCME Council 5 to Commissioner James Cunningham listing the issues the Union believes should be certified for arbitration.

I believe the City needs to retain outside counsel to assist in this arbitration. In a prior interest arbitration involving the Attorney Unit, the City retained Mr. James Dawson of the Twin Cities law firm of Felhaber Larson Fenlon and Vogt. Mr. Dawson also represented the City in the interest arbitration a few years ago involving the Minneapolis Fire Department. Mr. Dawson is the chairman of the Felhaber firm and is a nationally recognized expert on labor law. I have discussed this matter with Mr. Timothy Giles who concurs that the City needs Mr. Dawson's services.

The Felhaber law firm currently represents Collisys Electric, a party to litigation involving the City of Minneapolis. Briefly, Collisys Electric performed electrical work on the "Stop on Red" project. The City of Minneapolis entered into a service contract with Redflex, whereby it paid a monthly fee to Redflex for installation and use of its Photo Cop enforcement system. Redflex was responsible for all installation construction. To that end, it contracted with Network Electric, who in turn contracted with Collisys. The City paid Redflex each month in full, and Redflex began paying Network Electric. Network Electric failed to pay Collisys. Redflex at first paid Collisys directly with amounts intended for Network Electric, then brought a declaratory action in federal court to be allowed to pay amounts contractually required to Network to Collisys directly. Collisys cross-claimed and brought the City into the federal suit, alleging that the City was liable under a payment bond theory. The matter was dismissed from federal court, as diversity was destroyed with the addition of the City. Collisys then re-filed in state court, and the City and Redflex prevailed on summary judgment. Collisys has since appealed to the Minnesota Court of Appeals, and the matter is awaiting oral argument.

Since the Felhaber law firm represents a client currently adverse to the City of Minneapolis, Felhaber's representation of the City in the Attorney Unit arbitration would create a conflict of interest. Rule 1.7 of the Minnesota Rules of Professional Responsibility provides:

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless: (1) the lawyer reasonably believes that the relationship will not adversely affect the relationship with the other client; and (2) each client consents after consultation.

Thus, the Minnesota Rules of Professional Conduct provide that clients may waive the conflict and consent to representation. Mr. Dawson believes that his representation of the City in the Attorney Unit arbitration is unrelated to Felhaber's representation of Collisys Electric and will not adversely affect its attorney relationship with Collisys Electric. Collisys Electric has consented to Mr. Dawson's representation of the City in the interest arbitration. I am recommending that the City also consent to such representation.