

**ONTARIO CITY COUNCIL  
HOUSING AUTHORITY  
REDEVELOPMENT AGENCY  
SPECIAL MEETING  
MARCH 11, 2011**

**JOINT MEETINGS**

Special Meetings of the Ontario City Council, Housing Authority and Ontario Redevelopment Agency were held on Friday, March 11, 2011 at Ontario Convention Center North, 1947 E. Convention Center Way, Ontario, CA.

Notice of said meeting was duly given in the time and manner prescribed by law. Affidavit of compliance is on file in the Records Management Department.

Purpose of the meeting was to review the Arbitrator's Decision on the Johnny Thompson Matter.

**CALL TO ORDER**

The Mayor called the City Council/ Housing Authority/ Redevelopment Agency meetings to order at 9:10 a.m., and requested the City Clerk to call the roll.

<b>PRESENT:</b>	Mayor/ Chairman	Paul S. Leon
	Mayor pro Tem/ Vice Chairman	Debra Dorst-Porada
	Council/ Authority/ Agency Members:	Alan D. Wapner, Sheila Mautz, and Jim W. Bowman.

**ABSENT:** None

Also present were City Manager /Executive Director Chris Hughes, Assistant City Attorney Jeff Ballinger and Assistant City Clerk/ Secretary Vicki Kasad.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Mautz.

**PUBLIC COMMENT**

There was no one present who wished to speak during Public Comment.

**ADMINISTRATIVE REPORTS**

**REVIEW OF ARBITRATOR'S DECISION ON JOHNNY THOMPSON MATTER**

Mayor Leon introduced this item and noted that all Council Members had reviewed the material in this case and there were no requests to speak under Public Comment. He reviewed the procedures for this hearing, and noted that the City representative and the employee or his representative would each have up to 30 minutes for their presentations. He further explained that there would be no rebuttals, but Council would have the

opportunity to ask questions, after which the City Council would either move to Closed Session or Adjourn the meeting to a future meeting for formal action, with the Council's decision to be sent to the parties involved.

Laura Kalty, Liebert Cassidy Whitmore, representing the City, noted Arbitrator Michael Prihar's recommendation that Mr. Johnny Thompson receive a three day suspension, and requested that the City Council uphold the suspension. She commented that Mr. Thompson is a very nice man who is dedicated to the community and serves the City as a Senior Recreation/Community Services Supervisor. She indicated that the City appreciates his service to the City and the community, but noted that there had also been some problems with his performance. She explained that Mr. Thompson's position is the third highest ranking job classification in the department and detailed the hierarchy of the Community and Public Services Agency, as depicted in Exhibit G of the materials presented. She further explained that Mr. Thompson is a leader for the department, and others look to him to set the standard and model good behavior. She indicated that there is a pattern in the area of failing to follow City policies, rules and procedures. She noted that the specific incident in question occurred in February 2009, and following a series of investigations and discipline, Mr. Thompson's performance has subsequently improved. She indicated that in 2009 he had repeated issues with adhering to City procedures, but specifically on February 6, 2009 a representative of Bon View School Elementary School had contacted him regarding the possibility of using the City gym that afternoon for a basketball game. She explained that generally reservations and fees are required for this type of use, but the requirement was bypassed for this basketball game. She referred to Attachment 8, which was City Council Resolution #99-0138, adopted in October 1999, establishing the fees and procedures for use of City facilities, and stressed that the procedures were bypassed in this case. She paraphrased Mr. Prihar's decision highlighting Mr. Thompson's contacts with other staff members at various levels of reporting in his efforts to make arrangements for the basketball game.

Mayor pro Tem Dorst-Porada inquired if this level of testimony was required since the Council had all had an opportunity to review the entire administrative record and the materials provided. Mayor Leon inquired of the City Attorney as to the procedural requirements for this proceeding. City Attorney Ballinger indicated that it was not required to restate all the details of the incident.

Ms. Kalty indicated that she would keep her comments to a minimum and summarized the initiation of an investigation, Director Chase's proposal for a three day suspension, the hearing before then Fire Chief Hughes as well as a second appeal to now City Manager Hughes and the final notice of discipline. She explained that the Arbitrator had established that Mr. Thompson clearly knew the procedure and disregarded it. She further explained that the Arbitrator found that the proposed discipline was appropriate in the situation noting that Mr. Thompson's proven misconduct, had it been his first offense, would warrant a counseling; however this was not the first time Mr. Thompson had disregarded procedures—as had been previously noted in his annual performance evaluations. She referred to page 17 of the Hearing Officer's Findings and Recommendation and explained that the Arbitrator posed three questions as to whether the City had just cause to impose discipline in the case: (1) whether the employee engaged in the alleged misconduct, (2) whether the employee knew, or should have reasonably known, that engaging in such

misconduct could lead to discipline, and (3) whether the imposed level of discipline was disparate or otherwise unreasonable in light of all attendant mitigating and aggravating conditions. Ms. Kalty stated that the employee did engage in misconduct, the employee should have known that his behavior could lead to discipline and the discipline was appropriate and not disparate. She noted Exhibit A, an e-mail, in which Mr. Thompson acknowledged that he "...would rather be suspended or reprimanded for doing the right thing than following a non sense [sic] approach of doing nothing for our community and love [sic] ones". Ms. Kalty concluded that the City needs Mr. Thompson to follow City policies and procedures, and recommended confirmation of the recommended three day suspension.

Malcolm Simmons, SBPEA, representing Mr. Thompson, noted that he did not handle the original case, but was representing Mr. Thompson on the appeal. Mr. Simmons indicated that they are in agreement with almost everything the Arbitrator wrote, and commented that Mr. Prihar had been very thorough. But they differ on the final decision. Mr. Simmons referred to pages 16 and 17 of the decision regarding prior discipline. Mr. Simmons stated that Mr. Thompson was counseled in the past, but requested the City to show where Mr. Thompson was disciplined. He clarified his opinion that discipline does not include evaluations or written reprimands; but rather time off, suspensions or reductions in pay or demotions. He stressed that there had been no prior discipline in Mr. Thompson's 26 year history with the City. Mr. Simmons stated there were five causes of action in proposing the discipline, and the Arbitrator had ruled out 60% of those regarding the employee's intent as he had not acted for personal gain, and he did not try to go around the rules regarding waiver of the fee. Mr. Simmons suggested with that much removed from the case; he found it hard to understand how the Arbitrator came to his decision. He reiterated that there is no prior discipline in Mr. Thompson's file. He requested that the City Council overturn and rescind this decision, since it was nothing other than policy that Mr. Thompson had violated. Mr. Simmons suggested a letter of reprimand, noting that three days off work is excessive. He stressed that for a first offense, a three day suspension is outrageous.

Council Member Wapner questioned the legal point of the definition of discipline, noting that there is a long history of written reprimands and counseling through the years. He inquired that if those were not matters of discipline, then a written reprimand as suggested by Mr. Simmons would still show no prior discipline if there were future recurrences. Mr. Simmons indicated that Mr. Thompson did have two letters of discipline in the 1990s and two since the turn of the century; but stressed that those types of reprimand were not considered discipline in the industry. Mr. Simmons suggested that the City could have taken disciplinary action in several ways, but questioned a three day suspension for the first disciplinary action. Mr. Simmons indicated that this would not happen in most places he represented and commented that he was surprised that the Arbitrator had upheld it. Council Member Wapner then questioned the City's standard for the first level of discipline.

Ms. Kalty concurred with Council Member Wapner that the City might never be able to actually discipline an employee following Mr. Simmons' position on what constitutes discipline. Ms. Kalty clarified that written reprimands are indeed a form of discipline, but only suspensions and above include the ability to appeal such as this. She stressed that there had been four previous reprimands and also a performance improvement plan in 2004; and it was a regular topic addressed in his annual performance evaluations.

Ms. Kalty noted the history of discipline contained in the Notice of Intent and suggested that there was a need to start somewhere; and prior reprimands had not accomplished the desired results of improving performance.

Mayor Leon questioned if a three day suspension was excessive, and what the policy was for a first time suspension. Ms. Kalty indicated that City policy does not have a specific discipline matrix, but provides flexibility and discretion for managers to impose appropriate levels of discipline in the light of the particular issue or offense. She stressed that three days had been determined to be appropriate by the Agency Head, Mark Chase, and there was no requirement that the City start with one or two days for a first offense.

Council Member Bowman stated that in his experience evaluations are a very useful tool for behavior modification to address performance concerns as they arise. He commented that issues had arisen in the past and there was a history of not complying with policies, in spite of good performance in other areas. Ms. Kalty commented that Mr. Thompson had in this case been advised by the Assistant Director and other senior staff to go through the reservation process; and he violated direction from senior members of the department, which would then support this level of discipline.

Council Member Wapner commented that Mr. Thompson does a good job for the community, and did what some people wish they could do at times--bypass the rules. He read Mr. Thompson's email about being suspended or reprimanded and suggested that he was perhaps making himself a martyr. Council Member Wapner further suggested that in asking to have the suspension removed Mr. Thompson was lowering himself because he acted on principle and thought it was the right thing, even though he was aware of the potential for discipline.

Mayor Leon requested input from Mr. Thompson, and concurred with Mr. Wapner noting he thought that Mr. Thompson would do what he felt was right for the community.

Mr. Thompson stated that he did not like to be considered a martyr. He clarified that he had only asked a question to accommodate a school and their basketball game. He indicated that the City had accommodated schools numerous times in the past. He commented that he was baffled by this discipline with so many people included in the process, yet he was the only one included in this action. He indicated that it was not true that he had ignored what people said, but the City adopted a position of partnership when working with the schools, scouts, etc. He stated that his action resulted in two girls basketball teams having the opportunity to play on a rainy day. He noted that Geno Farrar had two opportunities to say no; and Geno is not present for this action. Geno approved the use. He stressed the City's past efforts to form partnerships and indicated that he spoke with supervisors only about the facility's availability. He further stressed that the Arbitrator had ruled that he did not waive the fees, and he was simply asking for facility availability to foster a partnership, which is generally embraced.

The Special Meeting was recessed to Closed Session at 9:44 a.m.

The Special Meeting reconvened in open session at 10:05 a.m.

City Attorney Ballinger reported that the City Council considered all evidence presented and had discussed the matter at length. He advised that the Council voted 5 to 0 to uphold the Arbitrator's decision, and incorporated the findings by reference, with the final ruling on the matter to come back at a future Council meeting for adoption.

Mayor Leon addressed Mr. Thompson and indicated that the Council acted out of love for him. He shared that he was conflicted as to whether to be here or not because of his relationship with Mr. Thompson, but after reflection came upon a scripture appropriate for this situation regarding a "correction from a friend vs. kisses from an enemy". He indicated that in this case the Council appreciates who he is as a man and what he does for the facility and the community, and his connection with the people; but the Council has a duty to uphold the policies of the City to the fullest degree. He stressed fairness for everyone, and noted that while Mr. Thompson is a "damn the torpedoes" type guy, and in his zeal to be good to the community, he does things for which he knows there will be consequences. This action is the consequence and is how the system works. Mayor Leon stressed that everyone has suffered consequences for their actions at some time, and indicated that this is an attempt to get Mr. Thompson's attention that there are policies that must be followed by all City staff. Mayor Leon noted that Mr. Thompson's improved performance since the discipline shows that he understands the requirement. He stressed that this decision is for the sake of the City and Mr. Thompson, and Mr. Thompson will be a better man and a better Community Center Director for all of this.

## **ADJOURNMENT**

There being no further business to come before the Joint Meetings, they adjourned at 10:10 a.m.

Respectfully submitted,

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VICKI KASAD, MMC, ASSISTANT CITY CLERK

APPROVED:

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PAUL S. LEON, MAYOR/CHAIRMAN