

LAW DEPARTMENT

John P Gourley, City Attorney

2010 saw many changes throughout the year, the legal department once again taking a front seat in implementing necessary changes to our administration in an effort to provide world class service to our citizens in as efficient a manner as possible. Most notably, each of our collective bargaining contracts was up for negotiation in 2010. This was an especially interesting year for negotiations as the legal department endeavored to combine two existing contracts into one contract for two separate groups.

Functions and Duties

- Rendering effective legal assistance in the preparation of legal opinions, studies, reports and correspondence, as required from time to time by the mayor, city department managers, the Mishawaka Utilities general manager, and MU department managers.
- Ensuring the providing of appropriate legal advice on a diverse range of substantive and procedural questions of law arising in administrative functioning of the City of Mishawaka and Mishawaka Utilities (“City”), including advice in arbitration matters, to firmly secure the interest of the City.
- Supervising and overseeing the review, negotiation and drafting of major contracts, collective bargaining agreements, tender documents and other legal documents.
- Supervising legal research and analysis, indentifying important issues and apprising the operational departments of emerging legal trends from legislation and court decisions and tendering advice to avoid unnecessary litigation.
- Serving on various boards, committees, ad-hoc working groups and task force, as required, to take care of legal niceties in framing of policies.
- Assigning claims and court cases to the staff attorney, deputy attorneys, or outside counsel keeping in view the nature and importance of the cases.
- Supervising and monitoring the contesting of the cases in various courts of law and to have interaction with the staff attorney, deputy attorneys, judges, and other government law officers, for their assistance in City matters.
- Drafting ordinances for the Municipal Code and legislation for the Indiana Code.

- Advising in the matter of preferring of appeals in superior courts and in the matter of taking recourse to other legal remedies.
- Processing of various fee bills of advocates and settlements of fees with outside counsel.
- Assisting the City and Mishawaka Utilities departments in preparing replies to legal notices received.
- Any other duty/task assigned by the mayor.

Under the direction of the corporation counsel – city attorney, all personnel of the Mishawaka Department of Law act as advisors to the mayor, and various department managers within the City and the Mishawaka Utilities. In addition, the City legal staff provides legal advice and assistance to numerous City boards, commissions and committees, including but not limited to, the following: Board of Public Works and Safety, Mishawaka Public Housing Authority, Mishawaka Redevelopment Commission, Mishawaka Board of Parks and Recreation, and the Mishawaka Common Council

Fire Collective Bargaining Agreement

The first of the collective bargaining agreements to tackle this year was the fire department. And there were a few major issues to tackle in that department this year. First, was to finally fully integrate the EMS division into the fire department. While these two divisions have been working together under one centralized administration for the past eight years, it was always envisioned that EMS would fully merge with fire...unfortunately, that has never happened – until this year. The legal department was finally successful in fully integrating the EMS memorandum of understanding into the fire department collective bargaining contract. An achievement in itself, this merger also serves to substantially increase our level of service to our citizens by providing a third ambulance in service far more often than ever before while also curbing the city’s overtime expense as well. What this ultimately means is that response times should be quicker but less expensive to our citizens, and the need to rely on outside EMS services to pick up our calls should be far less.

A brand new shift structure was also explored for the fire department. It is

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interesting to note that while we have existed under the current shift structure for decades – only a handful of fire departments in the country still operate under our shift

structure. While we were unable to flesh out all the details of a new shift structure, both management and the union did leave negotiations resolute to study a new structure and to make recommendations to our administration about the value of changing.

Lastly, the legal department was finally able to secure the fire union's approval of our city-wide drug-free workplace policy. The fire department was the final piece required to bring all our employees into compliance with a uniform policy.

Central Services Collective Bargaining Agreement

The second major negotiation occurred with the parks department and the street department. With the advent of the central services department it was obvious that a major integration needed to be made as we merged employees of both parks and streets into central services. This was a monumental undertaking as ultimately we needed to account not only for each individual employee, but also each piece of equipment, seniority, shift structures, pay structures, and job titles. In the end, the merger was exceedingly successful, as our service has not only become far more flexible, but more efficient as well.

With every maintenance or repair position at its disposal, the central services division allows not only for quicker responses to problems, but also faster solutions.

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Sewer Contract Change

There was also a major overhaul during contract negotiations for the sewer department. Specifically, the legal department negotiated a reduction in the number of job titles in the sewer department – down from 8 to 2. In effect, this eliminates additional expenses related to temporary job transfers to higher paying positions. While this was the most obvious effect, we also created a promotional system that isn't related to seniority (which tends to encourage less production) but instead is based on performance – which tends to encourage field-related education and excellent work product.

Police, Dispatch, and Utilities Contracts

The three remaining contracts to be negotiated were somewhat mundane compared to the radical changes proposed and adopted in the prior three contracts. The remaining three contract negotiations only contained changes that cleared up some ambiguous language, but they are all essentially the same contract. What this ultimately means is that both management and the unions feel that the current state of the respective collective bargaining contracts is amicable to preserve good working relationships between the parties.

Recognition

All in all, it was an extremely productive negotiating season, as the City made great strides toward not only becoming more efficient, but also increasing the level of

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outstanding service we already provide for our City. Our efforts were even recognized by the Council for the Advancement of Labor/Management Relations (CALMR) – an independent

organization dedicated to fostering positive interaction between labor and management. CALMR honored the City of Mishawaka twice with awards for excellence in negotiation, specifically for our work with the Central Services contract and the Sewer contract.

Fines and Fees

Another of the law department's major initiatives came to fruition on January 1, 2011 as the new fines and fees schedule went into effect. This important piece of legislation represents over two years worth of work and planning to put together. In preparation for the passage of this ordinance the law department compiled hundreds of figures to calculate the cost of doing business here in Mishawaka. The end result is a collection of fees that most accurately represent the true cost of the services the city provides to our citizens.

Code Enforcement Hearings

The legal department once again completed a full slate of code enforcement hearings. All told, the legal department represented the City in approximately forty hearings. It was an extremely successful year as we closed out almost all of our caseload due to the property owner's compliance. There are only a handful of unfinished cases that will return for hearing in 2011, but we expect several more properties to be filed for hearing as well where we expect to have continued success.

Equal Employment Opportunity Commission

The legal department received several EEOC complaints in 2010. Each complaint was thoroughly investigated and, for each, the legal department prepared a position statement for the EEOC. It is with great pleasure that for each complaint, the EEOC found no violations of any kind.

Collections

In only its second year of active collections the law department successfully secured over \$100,000 in uncollected funds last year. This represents more than a 300% increase in collections from 2009. We expect 2011 to be another record year for collections, as the fee ordinance affects rates accordingly.

Training

2010 presented several opportunities to provide training to our staff, and to the community. The legal department presented training sessions on workplace retaliation, the National Labor Relations Act, several sessions on liability, and various roles of government. The legal department constantly looks for opportunities to educate our peers, and certainly will look forward to doing the same in the coming year.

Pleasureland

In 2010: On May 25, 2010, the City of Mishawaka after more than a decade of ordinance changes and lawsuits, reached a mediated settlement agreement with Pleasureland Museum, Inc. Pleasureland was the last remaining adult use located in

the City of Mishawaka that was regulated by the City's Sexually Oriented Business special licensing and ordinance provisions.

Pleasureland Inc. had a lawsuit pending with the United States District Court questioning the legality of the City's ordinance that prohibited the sale of certain sexual devices and claiming damages from the City's enforcement of a portion of the ordinance that was not clarified by the previous lawsuits and action of the courts.

The settlement reached included that the City's purchase of the property, located at 114 West Mishawaka Avenue, for its appraised value of \$177,000 and settlement of the lawsuit and all other claims/expenses for an additional \$73,000. At the time of the agreement Mayor Rea indicated that although the cost was significant, the removal of the business, the lack of continuing and future legal fees, combined with the positive impact on neighboring properties represented a long term benefit that justified the comprehensive settlement at this time. "One of our key considerations had to be that, barring this type of settlement, this was a legal business that had the right to operate in perpetuity."

The funds for the settlement and demolition came from the City's Northwest Tax Increment Finance District. Subsequently, the building was demolished and removed, creating a vacant lot. The property is being marketed for redevelopment through the City's Redevelopment Commission. The City had previously acquired and demolished a number of the surrounding properties, but the marketing and development of those properties proved to be difficult with the presence of Pleasureland and the recent downturn in the economy.

Mayor Rea indicated again at the time of the settlement in May of 2010, that it is the philosophy of the City to confront problems and tackle them one by one so they don't lead to bigger problems. "One of our goals has been to change this block and improve Mishawaka Avenue. I think this acquisition is representative of the progress we are making on many fronts and just one more step in the right direction."

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Capital Avenue

On November 23, 2009, the City of Mishawaka joined Memorial Health System, Inc. in filing a Complaint for Declaratory Judgment and Damages against the Indiana Department of Transportation and the State of Indiana for passing legislation which would close numerous access points to Capital Avenue. The City of Mishawaka obtained a preliminary injunction against the State of Indiana. This matter is still pending.

Uniroyal

On January 14, 2004, the City of Mishawaka filed a Complaint for Damages against Uniroyal Holding, Inc., as successor to Uniroyal, Inc. and U. S. Rubber. On

February 26, 2009, the United States District Court, Northern District of Indiana, South Bend Division, ruled that the Defendant Uniroyal Holding, Inc. was not legally obligated for various environmental clean up expenses at the Hill Street site. Negotiations between the City and Uniroyal Holding, Inc. are still ongoing.