

ORDINANCE No. 185594

- * Pay award ordered by the Employment Relations Board in *Portland Fire Fighters' Association v. City of Portland* (UP-013-10), pending review by the Oregon Court of Appeals. (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. In 2006, in cooperation with the Fire and Police Disability and Retirement Fund, Portland Fire & Rescue implemented a Return To Work program to return disabled firefighters to permanent light duty positions.
2. The Portland Fire Fighters' Association filed an unfair labor practice complaint, asserting that the City should have bargained the impacts of the return to work program (UP 14-07).
3. The Employment Relations Board held in favor of the Association, and the City sought judicial review in the Oregon Court of Appeals.
4. The Oregon Court of Appeals, in *Portland Fire Fighters' Association v. City of Portland*, 245 Or App 255 (2011), held that ERB failed to construe the parties' collective bargaining agreement to determine whether the City in fact had the duty to bargain the impacts of the return to work program, and remanded the matter to ERB for such a determination.
5. On remand, the Association dismissed its unfair labor practice complaint.
6. In the meantime, as part of the return to work program, on October 30, 2006 Thomas Hurley, a firefighter deemed disabled in 1994 and re-trained through an FPD&R program to pursue other work, was directed to attend a mandatory Return To Work training session.
7. Firefighter Hurley refused to do so, because he was then working in Seattle. The City agreed that he was excused from attending the training to which he was directed, and ordered him to contact the Fund by March 9, 2007, to arrange for another time to attend the mandatory training.
8. Firefighter Hurley did not contact the Fund, and on April 13, 2007, the Fund discontinued his disability benefits. Firefighter Hurley did not challenge the order to attend training or the discontinuation of his benefits.
9. On March 7, 2007, PF&R ordered Firefighter Hurley to report for work on April 5, 2007. Firefighter Hurley did not report to work, and, on October 7, 2007, PF&R terminated his employment, finding him to have abandoned his job.

10. On behalf of Firefighter Hurley, the Portland Fire Fighters' Association grieved his discharge.
11. The grievance proceeded to arbitration, where the Arbitrator, relying on ERB's ruling in UP 14-07 (which had not yet been reversed by the Oregon Court of Appeals), held that the City did not have just cause to terminate Firefighter Hurley's employment.
12. While agreeing that neither Firefighter Hurley nor the Association had grieved the order to report to training or the termination of his disability benefits, and agreeing that the Arbitrator lacked authority to order the Fund to do anything, the Arbitrator ordered, in addition to reinstatement, that the City pay Firefighter Hurley the disability payments he would have received from the Fund had the Fund not terminated those benefits.
13. The City refused to comply with the portion of the Arbitration Award that ordered it to pay Firefighter Hurley's lost disability benefits, on the ground that the Arbitrator lacked authority to make that award.
14. The Association filed another unfair labor practice complaint (UP 013-10), and ERB held that the Arbitrator's award was enforceable, and that the City had committed an unfair labor practice by refusing to implement it fully. ERB ordered the City to pay the award plus interest at 9% per annum.
15. Pursuant to Resolution 36772, adopted by the Council on March 17, 2010, the City Attorney has petitioned the Oregon Court of Appeals for review of ERB's decision.
16. Under Oregon law, the petition for judicial review does not automatically stay ERB's order. The City sought, and was denied, a stay from ERB, and the City Attorney does not believe that there are adequate grounds to challenge the denial of the stay in the Oregon Court of Appeals.
17. Portland Fire & Rescue requests to pay the amount of the award now, subject to the City's right to seek repayment in the event the Oregon Court of Appeals reverses ERB's decision.
18. The City has calculated the amount of the award that it agrees it would owe if ERB's order is affirmed, including interest accrued through September 1, 2012, as \$150,456.69. Portland Fire & Rescue should be authorized to adjust its payment in order to resolve any disagreement with the Association as to the correct amount of interest.

NOW, THEREFORE, the Council directs:

- a. Portland Fire & Rescue shall draw and deliver a warrant, made payable as directed by the City Attorney, in an amount of \$150,456.69, plus any interest that accrues after September 1, 2012, to satisfy the award of the Employment

Relations Board in UP 013-10. PF&R is authorized to adjust the amount of payment in order to ensure that the City pays the correct amount of interest.

- b. In the event it is ultimately determined that the City is not liable for this payment, PF&R, in cooperation with the Office of Management and Finance and the City Attorney, is directed to use all prudent legal means to recover the payment.

Section 2. The Council declares that an emergency exists in order to avoid additional interest expense and to avoid additional unfair labor practice complaints from the Association regarding the interim payment of the award; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: SEP 05 2012

Commissioner: Randy Leonard
Prepared by: Harry Auerbach
Date Prepared: August 15, 2012

LaVonne Griffin-Valade
Auditor of the City of Portland

By



Deputy

Agenda No. **ORDINANCE NO. 185594**
Title

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<p>INTRODUCED BY Commissioner/Auditor: Commissioner Randy Leonard</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p><i>Randy Leonard / Bruce Adams</i> Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL</p> <p>Bureau: Portland Fire & Rescue Bureau Head: Erin A. Janssens, Fire Chief <i>Erin A. Janssens</i></p> <p>Prepared by: Carol Ann Boucher Date Prepared: 08/28/2012</p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date September 5, 2012</p> <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>JUD</i></p>	<p>CLERK USE: DATE FILED <u>AUG 30 2012</u></p> <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p>
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AGENDA

TIME CERTAIN
Start time: _____

Total amount of time needed: _____
(for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: _____
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	_____	_____