

## Primal Scream - Don't Pull the Plug!

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At the Dec. 18th city council meeting, councilman Barteo proposed pulling the plug on the appeal of the arbitrator's decision in the firefighter's contract dispute. I'm sure this will be raised again as the council considers the budget, and I want to urge the council not to abort the appeal process. It would make for both bad law and bad public policy.

First, it would make for bad law: The legal issue is the interpretation of the current firefighters contract with the city. The contract is ambiguous as to whether minimum staffing requirements stated within it were to last only for the first year or for the length of the contract.

When a contract can not be interpreted on its own terms, the trier of fact must determine whether there was ever a genuine meeting of the minds between the parties on the ambiguous portion(s) of the contract.

One of the principal ways to do this is to examine the intent of the parties in entering the contract, and this was considered extensively by the arbitrator. Testimony was taken from both sides concerning what their understanding of the minimum staffing clause was.

The firefighters apparently argued that they never would have agreed to reconsider minimum staffing because of the danger it might pose to firefighters, and from what I've read in the Times Herald-which is not an unimpeachable source, I admit-the arbitrator ruled that the union had made their case that anything but the minimum staffing requirements stated in the contract would endanger firefighters. And on this basis, the arbitrator ruled in the union's favor.

What this means is, the arbitrator ruled on an issue that wasn't before him. It wasn't his job to determine what the proper policy is. That's city council's job (for better or worse). It was his job to determine what the proper interpretation of the contract was. If he determined that the parties'interpretation of this clause could not be reconciled-for example, if there was no record from the time of the negotiations that someone on one side or the other agreed with the position of his adversaries-then there was no meeting of the minds on this issue and the contract is silent on it. That would mean the parties would need to go back and renegotiate. But that's not what the arbitrator ruled.

The arbitrator had a very narrow mandate. And he stepped outside that mandate in his ruling. He exceeded his authority, which is exactly the city's position in the appeal, and for that reason alone the appeal should go forward. If you allow the ruling to stand, it establishes bad law.

But it also establishes a terrible public policy. If the appeal is aborted, you also put the city in a very unfavorable position if similar disputes arise in the future. The city will be on record having surrendered its policy-making prerogative to an outside arbitrator. It can't stuff that genie back in the bottle when the next employee union sues and wants the arbitrator not to rule on the contract, but on what the best policy would be. We elect you to be our representatives. The arbitrator is not elected. To surrender your job to an arbitrator violates the very foundation of government in this city. It's bad public policy.

But there's one last thing to consider. Is it really true that the firefighters made a prima facie case that staffing levels below the NFPA minimum standards necessarily imperil firefighters or limit their firefighting capability? They may have convinced the arbitrator, but after 25 years of trying to find an evidentiary link between minimum staffing levels and either firefighter safety or success in fighting fires, no objective research has ever supported such a link. None. I have no doubt that the firefighters believe they will be in danger with staffing levels beneath this minimum, but no studies have ever proven that this is so.

So the arbitrator's not even right on the facts. I'm sure he's convinced the firefighters are right. But there's no objective, peer-reviewed evidence that they are.

Don't pull the plug on this appeal. It establishes bad law, and that makes a terrible precedent not just legally but practically for this city.

Thank  
you.