



Legislation Details (With Text)

File #: 0382-2011 **Version:** 1
Type: Ordinance **Status:** Passed
File created: 2/28/2011 **In control:** Public Safety & Judiciary Committee
On agenda: 4/4/2011 **Final action:** 4/7/2011

Title: To authorize and direct the City Attorney to settle the case of Cynthia Smalls v. The Municipal Civil Service Commission for the City of Columbus, Court of Common Pleas for Franklin County, Ohio; to authorize and direct the City Auditor to pay the settlement amount; and to declare an emergency.

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
4/7/2011	1	CITY CLERK	Attest	
4/6/2011	1	MAYOR	Signed	
4/4/2011	1	Columbus City Council	Approved	Pass
4/4/2011	1	COUNCIL PRESIDENT	Signed	
3/11/2011	1	Atty Drafter	Sent for Approval	
3/11/2011	1	CITY ATTORNEY	Reviewed and Approved	
3/11/2011	1	Atty Drafter	Sent to Clerk's Office for Council	
3/11/2011	1	Atty Drafter	Sent to Clerk's Office for Council	
3/10/2011	1	CITY AUDITOR	Reviewed and Approved	
3/9/2011	1	FINANCE DIRECTOR	Reviewed and Approved	
3/9/2011	1	Atty Drafter	Sent for Approval	
3/9/2011	1	Auditor Reviewer	Reviewed and Approved	
3/8/2011	1	Finance Reviewer	Reviewed and Approved	
3/8/2011	1	Finance Reviewer	Reviewed and Approved	
3/2/2011	1	Atty Drafter	Sent for Approval	
3/1/2011	1	SERVICE DIRECTOR	Reviewed and Approved	
2/28/2011	1	Atty Drafter	Sent for Approval	

BACKGROUND: This ordinance is submitted to settle the lawsuit of Cynthia Smalls v. the Municipal Civil Service Commission for the City of Columbus, Case No. 09-CVF01-325, Court of Common Pleas for Franklin County, Ohio for the sum of \$37,186.28 (Thirty Seven Thousand One Hundred Eighty Six and 28/100 and other good and valuable consideration. Cynthia Smalls was an employee of the Department of Public Service in 2008 and a member of the Columbus Municipal Association of Government Employees when she was subject to a layoff. The Municipal Civil Service Commission for the City of Columbus enforced a provision contained in the American Federation of State, County and Municipal Employees prohibiting bumping into that bargaining unit by non-bargaining unit employees. As a result Cynthia Smalls was laid off and instituted the herein styled litigation. The Franklin County Court of Appeals determined that the provision of the American Federation of State, County and Municipal Employees collective bargaining agreement prohibiting bumping was invalid. Cynthia Smalls was reinstated to a position within the

Department of Public Service on December 20, 2010. This settlement makes Cynthia Smalls whole during the period of her layoff less appropriate setoffs.

FISCAL IMPACT: Funds were not specifically budgeted for this settlement; however, sufficient monies are available in the appropriate account to pay the amount of this claim

To authorize and direct the City Attorney to settle the case of Cynthia Smalls v. The Municipal Civil Service Commission for the City of Columbus, Court of Common Pleas for Franklin County, Ohio; to authorize and direct the City Auditor to pay the settlement amount; and to declare an emergency.

WHEREAS, in 2008 Cynthia Smalls was laid off from her position of employment within the Department of Public Service and was denied bumping rights by the Municipal Civil Service Commission for the City of Columbus pursuant to a provision of the American Federation of State, County and Municipal Employees bargaining agreement; and,

WHEREAS, Cynthia Smalls commenced a lawsuit in the Franklin County Court of Common Pleas, Case No. 09CVF01-325; and,

WHEREAS, the Franklin County Court of Appeals has determined that Cynthia Smalls possessed bumping rights; that the provision of the AFSCME bargaining agreement prohibiting bumping was invalid; and, that Cynthia Smalls was improperly laid off; and,

WHEREAS, Cynthia Smalls was reinstated to a position within the Department of Public Service on December 20, 2010; and;

WHEREAS, it is deemed acceptable to make Cynthia Smalls whole for the period of her layoff and for other good and valuable consideration in exchange for the execution of a release by Cynthia Smalls and the dismissal with prejudice of the pending litigation; and,

WHEREAS, sufficient funds are available within the Department of Public Service to cover this settlement; and,

WHEREAS, an emergency exists in the usual daily operations of the City, in order to expedite the settlement of this matter, and otherwise for the preservation of the public health, safety and welfare.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1: That the City Attorney be and hereby is authorized and directed to settle all claims against the City of Columbus, its officers, agents and employees in the lawsuit of Cynthia Smalls v. The Municipal Civil Service Commission for the City of Columbus, Case No. 09CVH01-325, Court of Common Pleas of Franklin County, Ohio by the payment of \$37,186.28 and other good and valuable consideration as a fair and reasonable amount and is in the best interests of the City of Columbus.

Section 2: That for purposes of paying this settlement there be hereby is authorized to be expended by the City of Columbus, from the Department of Public Service, Office of the Director 59-01, OCA Code 592200, Object Code One 01, Object Code Three 1128 the sum of \$48,732.62.

Section 3: That the City Auditor be and is hereby authorized to draw warrants upon the City Treasurer upon receipt of voucher and a release approved by the City Attorney; one in the amount of \$37,186.28 and made payable to Cynthia Smalls less all allowable flat tax deductions; one payable to the Ohio Public Employee Retirement System to the account of Cynthia Smalls in the amount of \$8,924.71; one to the United States Treasury for FICA in the amount of \$539.20; and one to the Ohio Bureau of Workers Compensation in the amount of \$2,082.43.

Section 4: That the Department of Public Service shall credit the account of Cynthia Smalls with 256 hours of vacation leave and 221.51 hours of sick leave.

Section 5: That for the reasons stated the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in full force from and after the date of its passage and approval by the Mayor, of ten days after passage if the Mayor neither approves or vetoes the same,