

FOR IMMEDIATE RELEASE – NOV. 13, 2006

FROM: Daniel J. O'Hern, Court Appointed Mediator

Subject: The Federal Lawsuit brought against the Borough of Freehold in December 2003 has been resolved.

I am pleased that the parties have been able to resolve almost all of the issues in the subject lawsuit. I am generally in concurrence with the Statement Released by the Plaintiffs but would like to clarify certain points.

The agreement resolves a lawsuit brought three years ago by day laborers working and living in Freehold, who complained that they were denied the right to solicit employment in public places in Freehold and were subjected to discriminatory law enforcement. The settlement discussions also embraced claims that the plaintiffs and others had been subjected to discriminatory housing code enforcement.

I was appointed by the Hon. Anne E. Thompson, United States District Judge, to facilitate an agreement between the parties. Alan Levine of the Puerto Rican Legal Defense and Education Fund was lead counsel representing the plaintiffs along with attorneys Renée Steinhagen of NJ Appleseed and Julio Gomez of Latham & Watkins. The Borough was represented by Kerry Higgins, its Borough Attorney, and secured outside legal representation from its insurance carrier in the person of Robert Podvey, Esq. of Podvey, Sachs & Meanor. I encouraged the parties to retain the services of Dennis Bliss, the retired Director of Municipal Court Services for the Administrative Office of the Courts of the State of New Jersey, to aid in the formulation of procedures for law enforcement in these sensitive areas that will assure fair and balanced law enforcement based on mutual respect. We owe Dennis a large measure of thanks for the patient hours of negotiation with police officers, code enforcement officials, and with the plaintiffs in this effort. His work product may serve as a model for other communities dealing with these issues.

The Agreement is wide reaching, covering areas such as solicitation of employment, property maintenance code enforcement, and law enforcement in the Borough of Freehold. The Agreement will be monitored for a period of two years by a court appointed monitor with the court retaining jurisdiction for the duration of the agreement.

According to the terms of the agreement, the Borough will not interfere with the lawful use of public property including the pick up and discharge of day laborers. The Borough will not unlawfully hinder the exercise of free speech including the solicitation of employment by day laborers. The workers agree to respect appropriate municipal codes concerning public safety. Also, no residential code enforcement inspection shall take place without the resident being advised of his/her rights and informed consent given by the resident. A police officer may accompany a code officer on his or her rounds but will not accompany the code official to the resident's door or on the search unless there is an incident requiring police involvement..

The Borough will provide plaintiff's attorneys with civilian complaints resulting from code inspections. A compliance officer will provide to plaintiff's attorneys through the court appointed monitor Dennis Bliss, reports of compliance with this agreement. Furthermore, the Borough will install video recorders in its patrol cars. The agreement provides that the Borough will retain all data pertaining to claims of racial profiling and with interference with the lawful use of public property. It will also retain records on non-vehicular video recording. The plaintiff's attorneys have the right to inspect and copy any documents relevant to compliance with this agreement.

Because the federal court found that a certain ordinance of the Borough providing for issuance of process in an "officer's discretion" was unconstitutionally vague, the Borough has agreed to reimburse in accordance with established procedures the fines of those Latinos convicted of Loitering and/or Officer Discretion (Borough Ordinances 9.08.010 and 9.08.060) dating back to January 1, 2002. The Borough also agrees to reimburse fines for those convicted in Housing Code Inspections, other than violations for overcrowding, where no opportunity was given to correct the code violation. At the time of the offenses, the Code required that such a notice to cure be afforded to property owners or occupants. Also, the Borough will reimburse fines for convictions made on the basis of anonymous complaints not founded on articulable suspicion. The Borough is establishing a Latino Persons Fund of \$33,000 for such fine reimbursements.

Under federal law, when parties assert against a public body rights protected by federal statute or the Constitution, the law provides that the public body will pay the attorneys' fees of the claimants. The case was complex and constitutionally difficult. A trial would have been long, time-consuming and could have resulted in even greater legal fees for the Borough even were it to succeed in winning many of the claims asserted. Accordingly, as part of the settlement, the Borough will pay the plaintiff's attorneys fees of \$245,000 in addition to its own attorney's legal fees.

The parties are to be much commended for resolving this difficult social issue. Immigration reform is a national issue. Persons who have entered this country without documentation are nonetheless persons entitled to the protection of the Constitution and laws of the United States and this State. We have seen other communities that have reacted to this social migration with repression and outright harassment. Freehold is to be commended for being firm but fair in its attempts to mediate these differences. The Workers are to be commended for recognizing that they owe to the community the same duties as do all other residents, respect for properly applicable ordinances governing housing code requirements and respect for the property rights of others.