Council Direction:

This Report is intended to advise Council of the successful certification efforts of the Hamilton Ontario Water Employees Association (HOWEA) on the City’s water and wastewater treatment plant employees.

Information:

On November 12, 2009, the Ontario Labour Relations Board advised the City that it had received an application for certification by a newly created Association – the Hamilton Ontario Water Employees Association (HOWEA). This newly created Association was seeking certification of the employees at the City’s water and wastewater treatment plant. This was essentially an action for representation of such employees that were represented by the International Union of Operating Engineers (IUOE), Local 772. At the time of the application for certification, there were approximately 47 members of the IUOE, Local 772.

By way of background, this group of employees had a collective agreement with American Water Services Canada Corp (AWS) for the term January 1st, 2005 to December 31st, 2012. This agreement is commonly referred to the “water/wastewater collective agreement” and covered employees of AWS that had been under contract between the City and AWS. The contract between AWS and the City expired on December 31st, 2004 and on January 1st, 2005, the City resumed direct management and operation of the water/wastewater treatment facilities.
SUBJECT: Hamilton Ontario Water Employees Association Certification (HOWEA)  
(HUR10006) - (City Wide)

At the time of the transfer back to the City operations, CUPE Local 5167 (Inside/Outside Workers) had asserted that it had bargaining rights covering said employees. By virtue of the language contained in the CUPE Local 5167 collective agreement, the union claimed representation through its comprehensive all-employee inside/outside bargaining rights. As a result of this assertion, a tri-partite agreement was settled between the City, the IUOE, Local 772 and CUPE, Local 5167 as follows:

a. That CUPE and the City would recognize and agree that the scope of the CUPE collective agreement is a comprehensive “all employee bargaining unit of inside/outside employees” of the City.

b. That the City was bound to the water/wastewater collective agreement and that the City had become the employer (again) on January 1st, 2005.

c. That the IUOE, Local 772 agreed that on December 31st, 2009, it voluntarily and irrevocably abandoned the bargaining rights for the current bargaining unit.

d. That the City and CUPE Local, 5167 agreed that on January 1st, 2010, the City would voluntarily recognize CUPE Local 5167 as the bargaining agent for the employees previously represented by the IUOE, Local 772. The parties further agreed to recognize and continue to apply the terms of the water/wastewater collective agreement until the expiry of the collective agreement on December 31st, 2012.

In response to HOWEA’s certification application, on November 19th, 2009, CUPE Local 5167 submitted an “intervention” position with the Ontario Labour Relations Board. CUPE requested that the vote scheduled for November 20th, 2009 be cancelled on the basis that it objected to the status of HOWEA. Specially, CUPE purported that it did not believe that HOWEA was a trade union as defined under the Ontario Labour Relations Act. Notwithstanding this objection, it was the Board’s view that HOWEA did indeed establish itself as a trade union and as such, ruled that the vote proceed as scheduled.

On November 20th, 2009, the voting took place at the Woodward Avenue site of the water/wastewater treatment plants. This vote was officiated by a representative of the Ontario Labour Relations Board and was also attended by Mr. Randy Busnarda, President, HOWEA, and Mr. Greg Hoath, Business Manager, IUOE, Local 772.

Of the 47 employees eligible to vote, 44 employees attended the vote. Of the 44 employees that voted, 35 (80%) voted in favour of the applicant (HOWEA) and 9 (20%) voted in favour of the respondent (IUOE). There were no segregated ballots cast and no member of CUPE, Local 5167 executive attended the vote.

On December 2nd, 2009, the Board issued its decision – advising that “at the presentation vote, a majority of the employees who cast ballots, cast ballots in favour of the applicant (HOWEA).” In light of their previous decision that HOWEA did indeed establish itself with trade union status, the Board certified HOWEA as new union for those affected employees at the water/wastewater treatment plant. This certification was effective December 1st, 2009.
The City and HOWEA have agreed to terms of settlement that essentially preserve the current terms and conditions contained in the existing collective agreement. Apart from amending the term of the collective agreement to January 1st, 2010 to December 31st, 2012, as well as replacing reference to AWS and IUOE to the City and HOWEA respectively, all other terms and conditions remain unchanged.

The City has made necessary arrangements to ensure that union dues are appropriately directed to the newly created unit HOWEA. An election for the newly appointed executive board and their respective committees took place on January 20th, 2010. A meeting with the new executive is expected to take place in February, 2010.