

February 17, 2010
Regular Meeting Board of Fire Commissioners

The regular meeting of the Board of Fire Commissioners was held on the above date.

Present: President Rosenberg, Vice President Garcia, Commissioners Gaskin, Klein, Lee and Fire Chief Rooney

Absent: Commissioner Meszoros

President Rosenberg called the meeting to order at 6:05 p.m. and led the Pledge of Allegiance to the Flag.

Motion was made and seconded to dispense with reading the minutes of the previous meeting.

Old Business

1. Entertain a motion to grant a Non-Line of Duty Disability Pension request to P/FM Bruce Collins, effective November 18, 2009, and refer to Board of Trustees, Pension Plan B, for implementation.

President Rosenberg represented that a date has been set for an IME, but they don't have the results.

John Walsh introduced himself as Attorney for Bruce Collins and stated that Mr. Collins was just handed a letter telling him that the IME which this Commission ordered on December 16th has finally been scheduled for March 9th. Part of his presence tonight, one was to insure that the IME was scheduled. He knew that the Commission made a motion on December 16th ordering an IME to be held. He was very concerned when he read the minutes of the January 20th meeting where that was not followed. His client submitted a letter of retirement in November and he is not receiving any pay, so they wanted to get the IME scheduled as soon as possible.

President Rosenberg stated that the IME was scheduled and he wanted to clarify that there were two contradictory letters and in order for them to make an informed decision they have to have the results of the IME. On that basis, it seemed to him that a motion to table this to the next meeting would be the only suitable thing that they could do.

Attorney Walsh responded that he understood that and he was glad that the IME was scheduled. He wanted to point out one thing for the Board's consideration. He knows there has been some discussion as to what the standard to be applied in this case and he saw Attorney Anastasi's letter to the doctor. It is his understanding that the standard has always been whether you can perform the duties of a line Fire Fighter because regardless of your rank in this Department, ranks could be switched. His client, although he was the Fire Marshal, the Department had taken the position in a matter still pending in the Superior Court that he was only there in an acting basis, he was not the actual Fire Marshal and that they were going to schedule an exam for that position and if that's the case that he was only acting, he could be transferred. Those are important things to remember in your consideration that the Department has already taken the position in Court that he was not the actual Fire Marshal, he was only in an acting capacity, but also that the standard is, if you can't perform the duties of a line fire fighter in this Department, that creates a problem.

Commissioner Klein motioned to table the matter to the March meeting; Commissioner Garcia seconded and the Board passed it unanimously.

2. Local 834 – Grievance 2009-22; Article 6, Sandra McBride, Pension Benefits.

City Attorney Mark Anastasi represented that the matter was both a grievance and a personnel matter and it involves medical records and he recommended that they entertain a motion to go into Executive Session.

A/Personnel Director David Dunn introduced Phil White from Labor Relations Department who is coming over here to fill in and the Board may want him to sit in as well. President Rosenberg said he could stay.

Commissioner Klein motioned to go into executive session at 6:15 p.m.; Commissioner Lee seconded and the Board passed it unanimously.

Commissioner Garcia motioned to end executive session at 6:30 p.m.; Commissioner Klein seconded and the Board passed it unanimously.

Commissioner Klein motioned to table the matter for the purpose of having the City find a physician to refer the medical records to so they could determine intelligently the cause of death. The matter can't be tabled to a particular meeting because they don't know when that will be. Once the report is received, it will be put back on the agenda; Commissioner Gaskin seconded and the Board passed it unanimously.

3. Recommendation from Fire Chief Rooney to approve changes to the Chief's Office changing the Executive Secretary position to Administrative Assistant to the Fire Chief and the Board of Fire Commissioners and Pension Plan Trustees.

A/Personnel Director David Dunn represented that the Fire Chief asked him to address this matter. He stated that there was some discussion last month or last meeting that they had and David Dunn suggested to the Chief that in making the changes to the job description he simply bring it to the Board for its support basically. As a practical matter they didn't have to do anything.

David Dunn further represented that the Personnel Department is free to go ahead and make these changes to the job description for this position and will meet with the Supervisor's Union which would be the effective Union to get their final approvals as well, but it would be helpful to have their support to the organizational changes the Chief has in mind here as well.

If there were any questions, he was happy to answer them, but just so they knew this organizational change has already been made in the Civil Service Department where the Administrative Assistant also serves in a clerical and administrative support capacity and it's being reviewed as well for the Police Department so these three Departments with major Commissions that meet on a regular basis that the office staff is also performing duties for our being effective. The Chief has asked and A/Personnel Director David Dunn suggested that they have the support so when he goes to the Union, he simply will say not only is the Chief in support of it, the Commission is as well.

President Rosenberg responded that he was sure the Board was in support of this, but he thinks the one question was as far as the last three words in this description where it

was Pension Plan Trustees and that's where some of the other trustees of the Plan, he stated that he might ask them too.

David Dunn responded that it is an administrative/clerical support position. She is not a trustee. This position would not be a trustee of the Pension Plan. President Rosenberg stated that he thought that that was the question by some people.

Union President Whitbread stated that the issue is what are the responsibilities now that the Executive Secretary is in that position and are there any fiduciary responsibilities involved with that because of the work that will be done. David Dunn responded no. Union President Whitbread said he didn't know because he hasn't seen the changes. David Dunn said there are no fiduciary responsibilities called for this position, there would be some clerical, bookkeeping responsibilities which he thought she is already doing. Union President Whitbread asked if there would be any conflict now that she will be doing this and working for the Chief. David Dunn said no and asked why and continued to say he doesn't see any conflict at all. She has been doing this all along and she's in a different Union, so there is no conflict there either.

A copy of the job description was given to Union President Whitbread. President Rosenberg said that the Board supports it, but that was the only question that was raised on it.

President Rosenberg asked Union President Whitbread to read the description that was given to him. Union President Whitbread said that he couldn't read it now since he just received it. President Rosenberg's response was that there is only one paragraph that would have to be read, paragraph i; that would at all pertain to the Pension, the rest is purely administrative and certainly does not come anywhere near what Union President Whitbread's concern is. Normally he wouldn't ask him to read through something that was several pages long, but they're talking about one paragraph. President Rosenberg said they could come back to the matter if he wanted to go over it with the two trustees.

David Dunn asked Renee DeI Percio if this is already being done and her reply was yes. There is no change in what she is currently doing. It may be stated differently, but she is currently doing the work.

Commissioner Klein stated that there is nothing in there in paragraph i, and that is the only paragraph that applies to her role with respect to the Pension Plans. It is all administrative duties; there is no fiduciary responsibility of any kind described in there.

David Dunn responded that it was never intended to do so anyhow.

Union President Whitbread stated that he didn't have anything else to say, but Jim Morley called him and he is not here to speak for himself and that was why he was raising the issue. President Rosenberg asked if Jim was going to be at the meeting and Union President Whitbread responded that he had no idea.

President Rosenberg said to pass this for the time being and come back to it.

The Board came back to the matter at the end of the meeting and Commissioner Klein motioned to endorse the recommendation; Commissioner Lee seconded and the Board passed it unanimously.

New Business

1. Communications:
 - a. None.
2. Commissioner Garcia motioned to remove Eva M. Kershner, deceased January 20, 2010, from the Widow's Pension list and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Klein seconded and the Board passed it unanimously.
3. Commissioner Klein motioned to remove Lt Peter Langston, deceased January 25, 2009, from the Firefighter's Pension list, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Lee seconded and the Board passed it unanimously.
4. Commissioner Garcia motioned to grant a Widow's Pension request to Linda Langston, Widow of Lt Peter Langston, effective January 26, 2010, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Klein seconded and the Board passed it unanimously.
5. Commissioner Klein motioned to remove Retired FF Robert Gerlander, deceased February 1, 2010, from the Firefighter's Pension list, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Garcia seconded and the Board passed it unanimously.
6. Local 834-Grievance 2010-1; Class Action Pay Stopped.

Fire Chief Rooney represented that he spoke with Attorney Mitola and he informed him that he was unable to attend the meeting tonight and asked to table to next month's meeting so he could address the Grievance.

Commissioner Klein motioned to table the Grievance to next month; Commissioner Lee seconded and the Board passed it unanimously.

7. Local 834-Grievance 2010-2; PE Luigi Perelli, Appointment Date Make Whole.

Union President Whitbread represented that recently there was a major settlement outcome on the Lieutenant's test. One of the Lieutenants was a Pumper Engineer and his date to be a Lieutenant was retroactive back to 12/28/08 thereby opening up a PE position. When they made the Pumper Engineers last May, that position would have been open and this candidate would have been available to be promoted at that time and PE Luigi Perelli is looking to be made back to that day with back pay. PE Perelli was made in December.

Deputy Chief Petrucelli represented PE Luigi Perelli getting retroactive seniority back to that date; all the engineers from that promotional test were made and the first group of engineers were promoted to that position on June 14, 2009, so if anybody has a right to retroactive seniority back to 12/28/08, they feel that it would be the number one finisher on that promotional exam which was Robert Kostyszyn.

Union President Whitbread stated that all those positions were open prior to that. The problem is at that point because the position at the time Pumper Engineer McNelis had

not been settled due to the legal action taken on that Lieutenant's test, that position wasn't deemed open at the time. The settlement did not happen until the summer. Due to the settlement, that position was open. He wasn't quite sure what Deputy Chief Petrucelli was trying to say.

Deputy Chief Petrucelli said that he thought that if the original list was adhered to the way it should have been, McNelis should have been promoted on 12/28/08, but as a result of the outcome of the litigation, he was given a retroactive seniority back to 12/28/08. Union President Whitbread responded correct. Deputy Chief Petrucelli said none of the engineers were promoted until after that. They weren't promoted until May of 09. Union President Whitbread agreed, but there would have been an additional spot if it had been done properly. So at the time they made these people bona fide engineers, probationary, there would have been one more spot. Deputy Chief Petrucelli said there would have been 11 positions instead of 10.

Chief Rooney stated that there was no mention of any pumper engineers on that lawsuit. Union President Whitbread said it was filed as a lieutenant's list, but it impacts all the other promotional. Chief Rooney stated that they were not included in the settlement.

Union President Whitbread said that he didn't want to go back to 08, he wanted to go back to June when the opening would have existed. They weren't aware of this because there was no settlement until October or November. Union President said he wanted to go back to June 14, 2009. Deputy Chief Petrucelli asked if Union President Whitbread wanted Luigi Perelli to have the same retroactive seniority as the other engineers that were promoted on that date. Union President Whitbread responded and pay that he missed like 5 months worth.

President Rosenberg stated that it seemed to him that Perelli is entitled to be made whole effective the date of whatever the settlement was.

Deputy Chief Petrucelli said that Luigi Perelli was promoted on December 6, 2009.

President Rosenberg said that the opening exists the day of the settlement agreement. Union President Whitbread stated that settlements correct mistakes. The mistake cost him 6 months. President Rosenberg said he thinks the opening exists the date the settlement was signed.

David Dunn stated that there seems to be a case of unintended consequences because that settlement Perelli is getting the benefit of the retroactive. President Rosenberg feels he should get it effective the date of the settlement.

Commissioner Klein stated that he was more concerned with what is correct rather than the settlement date. Union President Whitbread stated that he felt that if there is a mistake made on a promotion and there is an error made by another department affecting their careers, they should not be the ones to take the brunt of the mistake. David Dunn represented that there was no finding in that case of a mistake, it was a negotiated settlement.

Deputy Chief Petrucelli reported that the settlement was November 25, 2009.

President Rosenberg stated that in his mind he felt that the opening was created on November 25, 2009, the settlement date and that's the day he should be made whole. Deputy Chief Petrucelli stated that Perelli was made on December 6th.

Commissioner Lee said her concern was that someone made a mistake whether it was intentional or not, she didn't think that he should be the one to take the fault for the mistake that was made.

Deputy Chief Petrucelli stated that June 14, 2009 was when the 10 engineers were promoted. He was made December 6th. Union President Whitbread was looking for 6 months. David Dunn said to give the seniority without the money. Split the difference. Union President Whitbread said it was the difference between top step fire fighter and bottom step pumper engineer for those weeks. He said he wasn't sure what it was, maybe \$20.00 a week. Commissioner Lee said maybe they could compromise.

Commissioner Klein motioned to grant the grievance to the extent of giving him the seniority date of June 14, 2009, but back pay only to November 25, 2009.

Union President Whitbread asked if he could hold that thought so he could speak to the grievant. President Rosenberg asked if he was at the meeting. Whitbread responded no. President Rosenberg said they could make that motion and if it wasn't acceptable, then he could move it on. Union President Whitbread said to go ahead.

Commissioner Klein motioned to grant the grievance to the extent of giving him the seniority date of June 14, 2009, but back pay only to November 25, 2009; Commissioner Lee seconded and the Board passed it unanimously.

Union President Whitbread asked to give him a copy of the motion itself, as soon as possible, so he could hand it to him to look at it and he will inform the Board and the Chief as soon as he knows if its good or not.

8. Local 834-Grievance 2010-3; FF Greg Daly, Article 26 and 26A, Acting.

Union President Whitbread represented that this grievance was about acting. This is filed on behalf of FF Greg Daly who acted as operator of heavy equipment which is the driving position on the ladders. Someone had to leave the firehouse to go to a workers' comp appointment and he was told to fill in and he was then told that he was only going to get paid for a couple of hours of acting. That has never happened before. He discussed this with Deputy Chief Petrucelli and told him if he looked back he would find that they were paid for the full day under the contract. He was asking that Greg Daly be compensated the difference and it is probably something like \$10.00.

Deputy Chief Petrucelli handed out the Daily Manpower Sheet for Friday, January 8th. The regular driver of the truck was FF Tim Collier. He was paid 12 hours of driving, he was paid the full shift of driving, but he had to leave for 4 hours to go for physical therapy; that caused them to bring in FF Mark Firpi for 4 hours overtime and then the backup driver Greg Daly moved up and drove for 4 hours. Since they were paying Tim Collier the whole day's driving pay 12 hours, they said it wouldn't be fair to have to pay two people for driving the truck for 12 hours the same day so they paid Collier the whole day's driver's pay and they thought it would only be fair to pay Greg Daly 4 hours of driving pay since he only drove for 4 hours. Generally speaking, you only get paid the driver's pay when you are actually driving the vehicle for the day.

Union President Whitbread said that the Deputy Chief just mentioned that two people don't get paid and he doesn't think it's fair. That is already being done and it is an accepted practice by the City. When they got travelling in, if someone was travelled for training during the day and they were to act that day, they would get paid the acting, and

that was discussed and negotiated when travelling was issued many years ago. The example would be if he was the truck driver and he has to do his MRT Training today, he would be put on another company, but because he would have acted that day and so that he wouldn't lose money, he gets paid the full day. They put a driver in behind him; he gets paid the full day. So the issue of people being paid twice is a normal occurrence on the job. There is nothing in the acting thing that talks about hourly rate anywhere.

Deputy Chief Petrucelli said that that was an agreement that was agreed upon between the Union and management that in the event an individual had to be travelled out and he was suppose to drive that day, he wouldn't be penalized by losing the driver's pay. They would pay him the driver's pay and also pay the backup driver because the guy that was travelled out should have driven had he not been travelled for training. It was only in that particular instance and it doesn't happen that often. Secondly, the driver's pay is calculated based on the hourly rate. It is factored upon the top step fire fighter's hourly rate plus 6%, so it is figured in the payroll as \$1.49 per hour and when you multiply that times 12 hours which is what the shift is it comes out to \$17.88 per day for driving. So \$17.88 for driving the truck for a day is calculated based on hourly rate.

President Rosenberg asked if he was given 4 hours pay. Union President Whitbread responded he was given only 4 hours pay that day. President Rosenberg asked how many more hours was he looking for. Union President Whitbread stated that he was looking for the payment for the day which everyone else gets. Deputy Chief Petrucelli responded another 8 hours. Union President Whitbread stated that under the new Munis system everything is done on an hourly basis on the payroll. It has become a problem. It doesn't come out the same for a 10 hour day or a 14 hour night. Shouldn't he get more?

Deputy Chief Petrucelli responded no. It is the same way as the overtime. Regardless of whether you work a 10 hour day overtime or a 14 hour night overtime, you are paid 12 hours of overtime. It averages out over the course of the year. Union President Whitbread asked where does it say that in any agreement or contractual language that that has to do with acting. He further stated that he did ask Deputy Chief Petrucelli to look back to see other people in the past that had acted in the same way, he would find out that they were paid the full amount. Deputy Chief Petrucelli responded that if they knew about it and caught it when the payroll clerks were entering it, if it was brought to his attention and questioned it, he would have said no. Could it have slipped between the cracks a couple of times and could someone have been incorrectly paid for the whole day when they shouldn't have, probably. Deputy Chief Petrucelli asked where in the contract does it say that if somebody drives a partial shift they will get paid for the whole day, where does it say that, it doesn't.

Union President Whitbread stated that there is a long standing past practice of it being done the other way.

President Rosenberg commented that they were spending a lot of time discussing the grievance and arguing over \$10.00. President Rosenberg welcomed a motion.

Commissioner Lee motioned to split the difference and pay 4 more hours; Commissioner Klein seconded and the Board passed it unanimously.

Union President Whitbread stated that this doesn't settle the issue with the motion because the next time it's done, he is going to file a grievance and they will see it again.

9. Executive Session for attendance review of the following individuals:
 - a. FF Frank Norris (B) – (Tabled until April 2010)
 - b. FF Darren Carroll (B) – Executive Session Waived.

FF Carroll had knee replacement surgery on December 21, 2009. His doctor recommended that he wait until March 9, 2010 which is his next visit with him and then to return to light duty after that. He stated that the doctor feels very confident that he will be able to return to full duty. The bleeding problem is non-existent.

Commissioner Klein motioned to table to the April meeting; Commissioner Garcia seconded and the Board passed it unanimously.

- c. FF Ronald Reed (B) – Executive Session Waived.

FF Reed reported that he had surgery on December 9, 2009. He stated that he was doing well with his therapy and that his doctor told him that in 3 weeks he could do light duty.

Deputy Chief Grace stated that FF Reed already did 90 days light duty and he has to return to full duty without any restrictions. Deputy Chief Grace stated that his doctor told him he could return between June and August, but that doesn't mean that he will be back to full duty.

Commissioner Klein motioned to table to the April meeting; Commissioner Lee seconded and the Board passed it unanimously.

10. Commissioner Klein motioned to accept the Report of Sick and Injury; Commissioner Garcia seconded the motion and the Board passed it unanimously.

11. Commissioner Klein motioned to accept the Payroll Register; Commissioner Lee seconded the motion and the Board passed it unanimously.

9. Policy and Procedure review. None.

President Rosenberg stated that at the request of the Treasurer, next month's meeting falls on St. Patrick's Day and it was requested that it be moved to March 10th, 2010. Everyone agreed.

10. There being nothing further to come before the Board, Commissioner Lee motioned to adjourn the meeting; Commissioner Garcia seconded and the Board passed it unanimously.

The meeting was adjourned at 7:25 p.m.