

March 10, 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 Klein, Lee, Meszoros and Fire Chief Rooney

Absent: Commissioner Gaskin

President Rosenberg called the meeting to order at 6:00 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

President Rosenberg swore in Pumper Engineers James Karns and James Jackson and they were congratulated by all.

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 asked if the results of the IME were received. Bruce Collins responded that the IME was yesterday and they did not have the results.

Associate City Attorney Mitola requested that it be tabled. They should have the results by the next meeting.

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

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

Associate City Attorney Mitola reported that he now has medical documentation that needs to go to a doctor for review to make the determination as to whether or not the widow is entitled to the pension benefits. Attorney Mitola further represented that Attorney Anastasi just received the medicals today and requests that it be tabled to next month.

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

3. Local 834 – Grievance 2010-1; Class Action Pay Stopped.

Union President Whitbread represented that the grievance was filed because of actions taken on former employee Robert Diaz whose pay was stopped without his knowledge. Union President Whitbread stated that it is a direct violation of the contract and he has an issue with the fact that neither Bob Diaz nor the Union was contacted.

President Rosenberg stated that Robert Diaz was at a meeting and agreed to a retirement and he was given the same amount of time, in fact, he thought he was given a week more than everybody else was. He said he was going to put his papers in and his pay was stopped after three weeks which, it is customary to give two weeks, and in this case he received three weeks.

Union President Whitbread represented that he filed a grievance on his behalf before he was retired and before anything had been signed. His concern was the fact that the Department stopped his pay which means that if this action is not addressed it can become the norm and he didn't understand why he wasn't contacted.

President Rosenberg responded that Robert Diaz was here with his attorney and Union representation. He agreed to put his papers in. He agreed that he no longer could do the job and the medical information supported that. This Board voted on it and he agreed to it and agreed to put his papers in and was given the customary amount of time, however, his pay was stopped, not only did he receive that time, but exceeded by another week.

Deputy Chief Petrucelli represented that he was sent a letter informing him that his pay was going to be stopped.

Union President Whitbread responded that Bob Diaz received a letter the Wednesday after the pay was stopped and the Union didn't find out until Bob Diaz called. Union President Whitbread was not arguing about retirement and not what was discussed about his medical issues, he was arguing the fact that his pay was stopped without proper notice either to the grievant or the Union as stated in the contract.

Commissioner Klein asked what relief the Union was looking for. Union President Whitbread responded that he would like an agreement between the Union, City and the Department that this won't happen again without people being given proper notification.

Associate City Attorney Mitola said that the difference was that Bob Diaz represented to this Commission that he can't do the job anymore and then he said he was going to put his papers in and the Board said they would give him two weeks. It wasn't a stopping of pay because they wanted to hurt somebody, it was because he represented that he couldn't do the job anymore, he agreed with the medical findings and then said he was going to put his papers in, and the Board as they customarily do, gave him the courtesy of two weeks to get his affairs in order to put his papers in, it is very different than the Department arbitrarily stopping somebody's pay. That's the difference.

Chief Rooney represented that Bob Diaz was called at home and was told that he was suppose to be coming in to fill out his paperwork to retire. His response was that he didn't know if he was ready to do it yet. He said he was going to talk to his lawyer and also said maybe around the first of the year. That's what his reply was. That would have added another week or more. Chief Rooney stated that he thought the Board was very fair allowing people to have two weeks to put their papers in. The Board, he thought, has the right to tell the employee if they can no longer do the job, they are retired as of that night. They have the right to do that as soon as they have medical documentation that says the employee can't do the job anymore, the Board has that right, but the Board has been very lenient and now someone is abusing it. He doesn't want to turn around and tell the Board to retire them the same night which they have that

right. They have been very fair with him; he didn't comply; and on top of that, he has been out for close to 2 ½ years receiving a paycheck for his problem and they were glad to do that but now it is time to end it.

Union President Whitbread responded that the Chief was right that the Board has done that in the past, but the Board did not make that decision, he said the Chief made the decision to stop his pay, not the Board.

Chief Rooney responded that he called and spoke with the City Attorney's Office and through their advice, he said yes.

Commissioner Klein motioned to deny the grievance; Commissioner Lee seconded and the Board passed it unanimously.

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

Union President Whitbread spoke with PE Perelli and he will accept the actions of the Board and requested that the grievance be tabled to be sure that PE Perelli was paid properly and documentation showing that he received his seniority.

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

New Business

1. Communications:

a. None.

2. Commissioner Klein motioned to remove Retired FF Walter McNeill, deceased February 22, 2010, from the Fire Fighter's Pension list, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Garcia seconded and the Board passed it unanimously.

3. Commissioner Klein motioned to grant a Widow's Pension request to Wanda Lee McNeill, Widow of Retired FF Walter McNeill, effective February 23, 2010, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

4. Commissioner Garcia motioned to remove Retired Fire Captain John Halica, deceased February 24, 2010, from the Fire Fighter's Pension list, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

5. Local 834-Grievance 2010-4; Bruce Collins, Medical Benefits.

Union President Whitbread represented that he spoke with Attorney Mitola and Bruce Collins and there is a possible settlement and requested that the grievance be tabled. It should be resolved before next month's meeting.

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

6. Local 834-Grievance 2010-5; Lorenzo Pittman, Medical Benefits.

Union President Whitbread represented that he was moving the grievance to the next step to Civil Service and then probably to the State Labor Board.

7. Local 834-Grievance 2010-6; Lt Mark Becker, Acting Captain at BOFC.

Union President Whitbread filed the grievance on behalf of Mark Becker and represented that Lieutenant Becker sits in when Captain Skoog is out and Lieutenant Becker approached people and asked why he was not sitting in when Captain Rivera was here. The grievance was filed because Lieutenant Becker has been denied the ability to come and sit when Captain Rivera is not available for these meetings.

President Rosenberg asked for an explanation for filing this grievance. Union President Whitbread responded that Mark Becker is the Lieutenant in Admin. Captain Skoog is not available to work here, he works in his place, he comes in and Acts as the Captain and gets paid. He asked why he couldn't sit in when Captain Rivera wasn't here and he was denied, so the grievance was filed on his behalf.

Chief Rooney represented that Captain Rivera is the Chief's Aide and the contract specifically says that the Fire Chief has the ability to have a Chief's Aide and assign him duties whenever he feels it is necessary. There is nothing in the contract that says that he has to have an Acting Captain take his place when he is not available. Captain Rivera was reassigned temporarily to Engine 3/4 and now that he has come back, he sits at the meetings, the Chief discusses grievances with him, he obtains information and discusses a lot of sensitive and confidential matters with him because he is his Aide and there is no reason to have an acting aide in that position when Captain Rivera is not here.

Union President Whitbread stated that there is a member of the Department sitting at the table and obviously he is doing a job here tonight, when he's not here, this grievance is requesting that somebody fill his spot and do the job that he is doing. Chief Rooney asked if he should take a Lieutenant from anywhere and have him come up. Union President Whitbread's response was that he is on the third floor, why couldn't it be him.

Commissioner Klein asked that didn't he say that he was to attend these meetings when Captain Skoog couldn't make it. That is not the situation that occurred. He is the Chief's Aide. He doesn't have the same job as Captain Skoog. If Captain Skoog had been absent from a meeting and Lieutenant Becker wasn't allowed to fill in, then there might be something to talk about, but that is not the facts that are being raised.

Union President Whitbread stated that Lieutenant Becker asked why he couldn't sit here and do the job, so he filed a grievance on his behalf.

Commissioner Klein motioned to deny the grievance; Commissioner Garcia seconded and the Board passed it unanimously.

8. Local 834-Grievance 2010-9; Assistant Chiefs, Picking Drivers.

Union President Whitbread represented that the past practice has been that Assistant Chiefs in Battalion 1 and 2 are allowed to designate a person as their driver. Recently, Chief Rooney has denied the Chiefs that ability and he recently told them that he will assign the people in their car and they will not have a choice to pick their drivers. There is a section in the contract that says the Chief will approve the drivers, but this is a long standing practice.

President Rosenberg responded that under the contract the Chief has the right to approve or disapprove, on that basis; it is up to the Chief's discretion.

Union President Whitbread filed this grievance and referred to a case that came out of this Department where there is language in the contract that explains how comp days are earned, paid and accumulated and it has to do with the Deputy Chiefs. When they filed that they were being done properly, the Department, the Chief and the City told them they had a long standing past practice and it went through the various steps and court and were told through the decision that the practice was a well known practice between the parties. The grievance is filed on the fact that the Department and the City made the same argument that he is making today, that this was a long standing practice that was given to everyone and even though there is language that says otherwise, both parties let it go.

Commissioner Klein responded that even though it was a long standing practice, that practice was put into effect by the Chief acting his discretion under the contract. For the record, the contract reads that it is understood and agreed that the assignment of an aide to the Assistant Chief is made or terminated at the sole discretion of the Fire Chief. If the Fire Chief, predecessor of the current Chief, at some point said okay, Assistant Chiefs you can pick whom you want, he was exercising his discretion under this provision of the contract and he can exercise his discretion differently now.

Union President Whitbread disagreed.

Chief Rooney passed out a copy of the contract language pertaining to drivers which states the Chief's rights.

Chief Rooney stated that he's been the Fire Chief for five years and during that time every time that an Asst. Chief wanted an aide they would tell him who it was and then he would approve or disapprove it. There was a case prior to this where a Chief came in and wanted an Aide, and Chief Rooney told him no and he didn't get that aide.

Chief Rooney explained that what he has been doing is allowing the Chiefs to pick their aides, but when they have a new Lieutenant or new Lieutenant's List, he has been putting the Lieutenants into the Battalion Chief's car for six months while they are on probation because while they're in the car and the Chief's Aide, they learn an awful lot and the Chief has an opportunity to work with them and make out their probe sheets. When they are done with their 6 months, the Chief can go back to Chief Rooney and say, do you want him or do you want somebody else and if Chief Rooney thinks it's okay, he approves it. Chief Rooney stated that what Union President Whitbread was saying was complete opposite of what he was doing.

Union President Whitbread responded that that was not what he was being told by the Assistant Chiefs that dealt with Chief Rooney. He further stated that Chief Rooney told somebody that he could pick his Aide after someone was in the car and then when that person did their six months and they told him, and he told them they could pick their aide, he didn't say he would disapprove it, he said they could pick whomever they wanted and then when they gave him the names again, he said no.

Chief Rooney responded that on one occasion he said no. Commissioner Klein said it was at the Chief's discretion anyway.

Commissioner Klein motioned to deny the grievance; Commissioner Meszoros seconded and the Board passed it unanimously.

9. Executive Session for attendance review of the following individuals:

- a. FF Frank Norris (B) (Tabled until April 2010)
- b. FF Darren Carroll (B) (Tabled until April 2010)
- c. FF Ronald Reed (B) (Tabled until April 2010)

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

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

12. Policy and Procedure review. None.

13. There being nothing further to come before the Board, Commissioner Klein motioned to adjourn the meeting; Commissioner Meszoros seconded and the Board passed it unanimously.

The meeting was adjourned at 6:30 p.m.