

September 21, 2011
Regular Meeting Board of Fire Commissioners

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

President Rosenberg called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance to the Flag.

Present: President Rosenberg, Vice President Ana Garcia,
Commissioners Doris G. Garcia, Klein, Lee, Meszoros,
and Fire Chief Rooney

Commissioner Rodriguez arrived at 6:10 p.m.

President Rosenberg represented that Jim Morley had an emergency and would not be at the meeting.

Absent: None

Commissioner Meszoros motioned to dispense with reading the minutes of the previous meeting; Commissioner Klein seconded and the Board passed it unanimously.

Old Business

1. Entertain a motion to grant a Widow's Line of Duty Disability Pension request to Joan McCullough, Widow of Retired PE James J. McCullough; effective July 13, 2011 and refer to the Board of Trustees, Pension Plan A, for implementation.

Attorney Mitola stated that James McCullough was a Pumper Engineer. He passed away on July 12, 2011 and the death certificate indicates the death was Cardio Respiratory Arrest and Coronary Heart Disease. It was further stated that he suffered from Coronary Heart Disease for years. What has to be established in order for Miss McCullough to get her widow's disability pension; is she has to show that Mr. McCullough passed away as a result of the condition that he suffered in 1989 when he got his disability pension.

Attorney Mitola represented that the widow is seeking a widow's disability pension and the Fire Commission back in October 1989 granted his line of duty disability and so what she is claiming is that he got a coronary artery disease and that he had a heart disease back in 1989 and that was the reason why he was granted the disability pension and what they need to prove is what was his condition back in 1989. Why did the Commission retire him?

Attorney Mitola referred to Exhibit B which was McCullough's request to go before the Board of Fire Commissioners seeking a line of duty disability retirement because of his heart condition which occurred on January 17, 1989 and on October 10, 1989, the Commissioners granted a disability pension, but they didn't set forth in the letter (Exhibit C) what they based it on. Attorney Mitola was unable to locate any medical documentation from 1989 to show the connection and to see exactly what condition he had in 1989. He requested the family to provide information. Attorney Mitola received a medical report from the primary care physician stating that in 1989 he had chest pains prior to retirement. (Exhibit E) He asked for a disability pension based on his heart condition.

Attorney Mitola said there were notes referring to a workers' compensation claim. President Rosenberg stated that they need more information before they make a decision.

Attorney Mitola recommended that Ms. McCullough be granted a regular widow's pension so she can start receiving money and then it could be changed if they get more information and make a determination that she is entitled to the disability pension.

Commissioner Klein stated that the most important thing they would need to know is was the workers' comp claim a heart and hypertension claim made and accepted.

Commissioner Klein motioned to grant a Regular Widow's Pension subject to review and possibly changing that to a disability pension; Commissioner Meszoros seconded and the Board passed it unanimously.

2. Local 834-Grievance 2011-23; FF Josh Benderoth, Article 5, Disciplinary Action.

Union President Whitbread stated that it would be necessary to have Chief Grace at the meeting when the grievance is heard.

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

New Business:

1. Communications:

a. None.

2. Commissioner Meszoros motioned to remove Retired PE Thomas P. Mingrone, deceased August 27, 2011, from the Fire Fighter's Pension list; and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Ana Garcia seconded and the Board passed it unanimously.

3. Commissioner Klein motioned to grant a Line of Duty Disability Pension request to Lt Marc Strickland, effective 2400 hours, September 2, 2011 and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

4. Local 834-Grievance 2011-21; FF Robert Gaito, Overtime.

Union President Whitbread represented that the grievance was filed on behalf of Fire Fighter Gaito. He was ordered in on his day off on 4/12/11 by Deputy Chief Grace for an investigatory hearing concerning an incident that happened in the firehouse. The meeting consisted of David Dobbs, Vice President as a Union Rep., Fire Fighter Gaito, Chief Grace and Phil White from Labor Relations. The fact that he was not on his regularly scheduled day means he should be paid for his time. If you're ordered in, you should get paid.

President Rosenberg responded that he was brought in based on the investigation of a disciplinary action. Union President Whitbread responded he was ordered to come in to attend an investigatory hearing.

Chief Rooney stated that Mr. Gaito was called in because it was a very serious matter. He had used the "N" word and we needed to get this investigation done immediately. Union President Whitbread stated that he was going to stop him right there for a second. Mr. Gaito is not here and when you discuss personnel issues, you have to give him the right to go into executive session. President Rosenberg asked where Mr. Gaito was. Union President Whitbread responded that he was not here tonight. He doesn't need to be, but you are discussing personnel issues in public. President Rosenberg responded that he brought the grievance to this Board and in order for this Board to make an informed decision as to the merits of his grievance they were discussing an issue that he's grieving.

Commissioner Klein responded that was true, but the provision in Article 5 that they were handed says. . . "Unless the seriousness of the infraction is such that immediate action is necessary", which is precisely what the Chief was addressing. Union President Whitbread stated he was not saying that he can't do that, but he has to pay him when he orders him on his day off. President Rosenberg stated that he didn't see why he would pay him to bring him in on an investigation of something of such a serious nature that had to be addressed immediately. Commissioner Klein asked if there was a provision in the contract that he was relying on. Union President Whitbread responded yes, anything over and above your regular hours; you have to be paid for. It was for an investigation over a month old. Chief Rooney responded that it was because he didn't find out about it until almost a month after it happened. He didn't know about it right away. Chief Rooney further stated that he wasn't going to reward someone who was involved in that kind of an incident. Union President Whitbread responded that he didn't care if he thought it was a reward and he reminded him that he paid this before when people were called in.

Commissioner Klein asked to see what Union President Whitbread was relying on in the contract. Union President Whitbread reminded everyone that they were discussing personnel matters in open session and they should be in executive session.

President Rosenberg responded that he didn't think they could discuss this without discussing the whole thing. Commissioner Klein requested that they go into executive session.

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

Commissioner Klein motioned to end Executive Session at 6:25 p.m.; Commissioner Ana Garcia seconded and the Board passed it unanimously.

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

5. Local 834-Grievance 2011-24; Lt Marc Strickland, Retirement Benefits.

Marc Strickland represented that his attorney had to leave and requested to read a letter to the Board. Request was granted.

Marc Strickland stated that it has come to his attention that he will be charged the higher rate double of insurance of the upcoming contract for medical insurance. He asked for a copy of the contract from Local 834, COB Benefits Office and COB Labor Relations

Office and was told there is no copy available because the upcoming contract has not been signed.

He was requesting that the terms of his disability retirement remain completely under the last signed contract agreement between the COB and IAFF, Local 834. This will eliminate any future inconsistencies and disagreements.

President Rosenberg stated that it was his understanding that there was a cutoff date. He realizes that there is not a final contract, but his understanding was that there was a cutoff date as far as where it was going to be broken off between the new contract and the old contract. He asked if that was correct.

Union President Whitbread responded that the issue he had to talk to the City about is only a matter of days. President Rosenberg stated that at this point and time, this Board would not be able to really act on his grievance, while he could understand it, he doesn't think they have the guidance that they would need which hopefully it could be addressed when the contract is finalized.

Union President Whitbread said that the best response he could give is that he is currently in talks and negotiations with the City and he recently got a copy of their version of the contract in its entirety and he has to get it to his representative.

President Rosenberg stated that at some point in the near future this will be worked out between the City and the Union and at that point they would be able to address Lt. Strickland's grievance.

Mr. Strickland stated that he retired on September 2, 2011 and his understanding is that the contract of the date you retired is the contract and again he heard earlier that he retired on Pension Plan B, the last completed one as of September 2 is this one right here, the other one is still being worked on.

President Rosenberg responded that it was ratified by the Common Council and also by the Union, so at the point that they have it in writing with the date, he thought that all of these things would be made clear to the Commission.

Mr. Strickland asked that one question be on record; is there a signed contractual agreement. President Rosenberg responded that he couldn't answer that question and this Commission is not in a position to be giving an answer on that.

Mr. Strickland stated that they were saying what is going to happen, but he is retired already.

President Rosenberg stated that he understood that the contribution was higher under the new contract, and his advice was to pay the additional premium and grieve after the contract is out and if in fact he is right, he would be made whole and have the money back. If he's wrong in his assessment, at least he wouldn't have lost his insurance because if he didn't pay the premium the insurance company might drop him and then he would have no insurance.

Commissioner Rodriguez motioned to table the Grievance; Commissioner Ana Garcia seconded and the Board passed it unanimously.

6. Local 834-Grievance 2011-25; Probationary/AC Robert Morton, Article 5, Disciplinary Action.

Union President Whitbread represented that Chief Morton was brought in by Chief Rooney to discuss an incident that they had at their Communications Center which concerned the failure of the Center to dispatch a police officer at the scene of a fire where one of the residents was unruly and trying to get back into the building and had requested numerous times for a police officer priority one and they actually had firemen restraining that person. Chief Morton heard it on the radio; went to Emergency Center and asked why they weren't sending a police officer. He was accused of doing something by some employees at the Communication Center. He was accused of using profanity.

Executive Session was waived by Assistant Chief Morton.

Assistant Chief Morton reported that on the evening dated Chief Thode responded to the fire. Chief Thode continued to call their dispatch center to send police, the third time he called verbatim to the dispatch center, could you please relay to the police department the severity of the incident we have here. The police were not on scene yet. Over the radio transmitted that they are physically restraining a civilian. I drove to the dispatch center and wanted to know who was in charge and why the police have not been dispatched to this location. I at no time used profanity. The supervisors neglected to send police to the scene and at this point and time, I was more or less the person they want to blame. I never used profanity when I walked in there. I did demand to know who was in charge and why no police responded at this time.

President Rosenberg asked how long a period of time was it from the time the other Chief asked for the police to be dispatched how long was it before they were finally dispatched. Assistant Chief Morton responded 22 minutes between the first time Chief Thode called and the police officer on scene realized why I was called. There was a police officer there; he thought he was there for traffic. The dispatch center did not relay to the police department what was going on. The safety of my subordinates and the safety of my peers as far as I was concerned were at risk and I wanted to get a police officer there as soon as possible. I was accused of using profanity by two of the supervisors, two of the supervisors that didn't do their job. At no time did I use profanity when I walked into that place. I did demand to know who was in charge and I did demand an answer which I never received. To this date, I don't know why.

Commissioner Klein asked if his Aide was Lieutenant Shevlin. Assistant Chief Morton responded yes.

Chief Rooney represented that Assistant Chief Morton is on probation and that is part of his examination. The first part is the written, the second part is the oral, and the third part is an evaluation on how he performed within the past year and the last part of the examination is six months of probation. During that time he is graded every month and at any time if he fails he could be put back as a Captain. Not less than a year ago when he was a Captain he had an opportunity to have roll call in the kitchen and when he had roll call in the kitchen he was using profanity quite frequently in front of the fire fighters and one fire fighter told him, listen, there is a woman here and he said, I don't give a "F" and he just kept rambling on and she left and he was disciplined for that. He was given a written warning and he had to apologize to everybody there. So, his credibility to me as the Fire Chief is in question.

He goes to the Emergency Operations Center and he has two credible supervisors claiming that he came there and he was using profanity and he is also telling them that they are taking better care of the police than they are of the fire fighters. That's extremely unprofessional behavior. He says that he didn't say it and I feel that his credibility to me is in question and I believe the people up there on what happened and when he went in there. He was there and he was upset and he acted unprofessional.

As you can see, the Chief that was over there who needed the assistance of the Chief of the police went back over there and talked to them in a professional manner asking what happened and why they didn't get the police officer and that's the way you are suppose to do it. He is in a position here where he is on probation and this is very serious for me as a Fire Chief to allow somebody in that caliber to go and represent our Department. That's why he was disciplined.

Chief Rooney represented that the nature of the discipline was a one day suspension, an extension of his probation for six months and he had to go to anger management.

Commissioner Klein stated that in the 2326 that Lt Shevlin submitted, he doesn't say anything one way or another about Chief Morton using profanity. He didn't go into the private room and the claim is that the profanity was used before going into the private room. Chief Morton responded correct. Commissioner Klein stated that if it was said outside, Lt Shevlin would have heard it and that he was wondering what Lt Shevlin had to say.

Commissioner Rodriguez stated that his concern was that they say that he used profanity at two different parts, one says that he used it in the aspect of one of his co-workers and the other one stated that he used it in another area. He sees a little bit of inconsistency. He doesn't doubt that the first reprimand had occurred but he doesn't know if he takes these two statements as gospel.

President Rosenberg stated that he felt that the Chief acted with best intentions for the Department and for the men and they certainly were in a situation where somebody at that dispatch center did not do their job properly. He admires the fact that the Assistant Chief was looking out for his men.

Commissioner Meszoros asked who did the investigation. President Rosenberg responded Chief Rooney. Commissioner Meszoros stated that he's been to Communications and there was an incident there talking, something would have been recorded. Do we know where we can get tapes? Chief Rooney responded that this conversation was not recorded. Everyone's conversation is not recorded on the floor.

Commissioner Rodriguez stated that he has no doubts that he may have been upset over what had transpired and he would not doubt that when he walked in there the voice tends to be a little elevated and if there are dispatchers, why not say, let's go into another room, we don't want this to interrupt their ability to work efficiently.

Commissioner Doris Garcia stated that she read one section that the person said that he "thought" that he heard him; he "thinks" he used the "F" word. He wasn't sure, he said he thinks. When he walked into that room he had to have been pissed. He was mad. He was very upset and sometimes these little words tend to slip out.

Chief Morton stated that as everyone heard the Chief earlier about what happened when he was a Captain, he made it a point, he was very happy to get to this level and he wasn't about to mess it up.

Commissioner Doris Garcia responded that she understood, but sometimes you could get so upset because your men were being jeopardized, why wasn't the police officer there and you were very upset and those little words tend to slip out. It's like email, once it goes out, you can't grab it and get it back in. Chief Morton responded that it didn't go out. Commissioner Doris Garcia stated that she was concerned because the Chief said that the first time you used the "F" word when you were reprimanded the last time and they are saying that you used the "F" word again. Chief Morton stated that he did not use it.

Commissioner Lee said that her only concern was that she could understand that he's losing credibility with the Chief because of his past and she could understand him not having any reason to doubt those supervisors. She is confused about this situation and that's what happens when you get the reputation of being a curser and even though he may have changed, he has to overcome that. She wasn't sure if he used those words that day, she wasn't there, she doesn't know.

Commissioner Ana Garcia stated that it was very hard. She felt there was something there.

President Rosenberg suggested that the additional probation be eliminated and the one day suspension be upheld. Commissioner Klein stated that he was thinking the same thing. He felt that was fair and equitable.

Commissioner Rodriguez asked if the 6 month probation is eliminated, obviously this issue will be heavily used in his evaluation during the past 6 months. Chief Rooney stated that he is still on probation.

Commissioner Rodriguez asked Chief Rooney if this could hold him back from obtaining that position that he is on probation currently for. Chief Rooney responded as long as he has no other marks within the next 6 months, no, absolutely not. Commissioner Rodriguez asked if the probation is up next month, can this be used enough to not grant him that position. Chief Rooney responded no.

Commissioner Klein stated that they could do that or the other approach is they have the ability to get more information to see what the tapes show and also to see what Lt Shevlin has to say. What President Rosenberg was suggesting seems to be a fair and equitable resolution.

Commissioner Klein motioned to uphold the one day suspension but not the six month extension of probation; Commissioner Lee seconded and the Board passed it unanimously.

Union President Whitbread thanked the Commissioners for taking the time and going over the information.

Union President Whitbread stated if they wanted to bring up the previous incident and talk about credibility, when he was approached by the Department and spoke to the Chief very candidly and honestly, he said yes I did that. He did not shy away from it and he admitted yes, he made a mistake, he apologized to everybody involved. This time he's telling you he didn't do it, just as candidly as he did back then.

Commissioner, you brought up a very good point, there were a whole bunch of people in that room and nobody was talked to, two people sent letters and he finds it a little bit upsetting that the credibility of the people that he works with and work for the Chief, their credibility is always a question and everybody else is the most honest person that walked this earth. There were other people in the room, there was no evidence brought during his hearings that they were ever questioned or asked. He thinks the Chief already said that there was no need to talk to the Aide. The Aide was present in the room where this allegedly happened. He also had an issue and it is in the grievance, he doesn't think under the disciplinary process the Chief has the right to extend probation, that is a Civil Service issue and he could probably guess if he asked if whether he went to Civil Service to ask if he can do it, he thought the answer was going to be no.

Chief Rooney stated that he did. Union President Whitbread asked if they told him he could. They voted in favor of it.

Union President Whitbread wanted to be clear on the motion and asked he doesn't have an extension on his probation. President Rosenberg answered no he does not. Union President Whitbread stated that he can still continue this grievance. President Rosenberg responded he could continue the one day suspension if he wanted to.

Commissioner Klein stated that it compromises kind of a safe harbor for him because if they dug up the tapes and the tapes happen to show up he is going to crash and burn.

President Rosenberg responded that if he wanted to grieve this to the State obviously he has that right, but he thinks also the Chief has the right if he chose to go that way to maintain his position with the additional six month probation.

Commissioner Rodriguez stated that he knows that he had been reprimanded or talked to regarding this issue, now is this issue addressed on that level also because it doesn't say if they were also addressed.

President Rosenberg stated that he didn't think that this Fire Commission has any authority over the dispatchers, but it sounds like they were not talked to.

Chief Rooney represented that he spoke to Doree Price, Supervisor at the EOC.

Union President Whitbread stated that there is an ongoing issue at that dispatch center, there are numerous problems and numerous complaints and there is actually a system in place in the Department to email complaints.

Commissioner Doris Garcia responded that it still doesn't give anyone the right to walk into any room and to use profanity. She didn't know and until there is more proof in front of her, she can't make a decision on him saying he did not say it, she can't make a decision that he did say it. She needs more proof; he has a history of doing this. He was honest at that time because he was up for a promotion.

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

a. FF Mark Bigard (B)

Deputy Chief Petrucelli represented that FF Bigard had a family crisis and was not at the meeting, but he received a fax from his treating physician with an update on his condition and on his return to work.

Commissioner Rodriguez motioned to table to the October meeting; Commissioner Ana Garcia seconded and the Board passed it unanimously.

b. Lt Shane Porter (B)

Deputy Chief Petrucelli reported that Lt Porter will be back on full duty with no restrictions on Monday, September 26, 2011.

c. Capt John Mazza (B) – Executive Session Waived.

Light duty on October 10, 2011.

d. Lt Scott Boris (B) (Tabled until Oct.)

e. LT Joseph Southard (B)

Deputy Chief Petrucelli reported that Lt Southard will be on light duty on Monday, September 26, 2011.

8. Commissioner Ana Garcia motioned to accept the Report of Sick and Injury; Commissioner Meszoros seconded and the Board passed it unanimously.

9. Commissioner Meszoros motioned to accept the Payroll Register; Commissioner Klein seconded and the Board passed it unanimously.

10. Policy and Procedure review.

a. None

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

The meeting was adjourned at 7:20 p.m.