

February 15, 2012
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 6:05 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, Rodriguez and Fire Chief Rooney

Absent: None

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

Old Business

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

Union President Whitbread represented that he spoke to the Chief and the Grievance is resolved, but wants FF Benderoth to look at his file to make sure that all the documents that they were told are to be removed have been removed. FF Benderoth is trying to set up an appointment with Chief Grace next week and Union President Whitbread will get a letter to the Chief before the next meeting and the grievance will be gone.

Commissioner Ana Garcia motioned to table the grievance; Commissioner Meszoros seconded and the Board passed it unanimously.

2. Local 834-Grievance 2011-24; LT Marc Strickland, Retirement Benefits. (Tabled until January).

Union President Whitbread represented that he met with City of Bridgeport and they made a lot of progress. He is hoping to see a document with all the signatures on it stating what the new agreement is.

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

New Business:

1. Communications:
 - a. None.

2. Entertain a motion to Grant a Pro Rata Pension Request to former LT Douglas Smith, (Resigned 6/20/01), effective February 7, 2012, and refer to the Board of Trustees, Pension Plan B, for implementation.

Deputy Chief Petrucelli represented that Lt Doug Smith resigned from the Fire Department in June of 2001 and at that time he had 13 years in the Department and his pension was frozen. You have to have 25 years on the job and that 25 year anniversary date was February 7, 2012, so at that point he can apply for a pension, but his pension amount will only be 2% per year for the number of years that he served which was 13 so he will be eligible for 26%.

Commissioner Klein motioned to grant a Pro Rata Pension Request to former LT Douglas Smith, (Resigned 6/20/01), effective February 7, 2012, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

3. Entertain a motion to Grant a Pro Rata Pension Request to former FI Manuel Alicea, (Terminated 2/25/08), effective February 7, 2012, and refer to the Board of Trustees, Pension Plan B, for implementation.

Associate City Attorney Mitola stated that the one issue they have to clarify and state for the record is Mr. Alicea has a pending grievance where he is seeking the reinstatement for the position that he lost, so the problem here is he is coming before the Board and he is saying that he is going to retire and collect his pension while he has that pending grievance and so there is a question in his mind with respect to whether he can do both because they are inconsistent. This is different then a situation where they had individuals who have been terminated and they take all their money out. That's not what they have here. They have an individual here who wants to retire and start collecting a monthly pension while at the same time he's pursuing the grievance to be reinstated to his position as a fire inspector.

President Rosenberg stated that Mr. Alicea is putting in for his retirement which is his 25th anniversary at a reduced rate, wouldn't that nullify the pending grievance. Attorney Mitola responded that he thought so but he doesn't know if he is going to waive his right to seek reinstatement.

President Rosenberg stated that if he is applying for his retirement which he is entitled to at a lesser rate, however, he doesn't see how this Board could reinstate his job.

Mr. Alicea responded that he was not asking to have his job reinstated. He said what he was looking for was his 50% that he thinks he was entitled to in the first place.

Union President Whitbread represented that by the pension plan on his 25th anniversary, he is allowed to apply for a pension and under this it's a partial that does not prohibit him from pursuing his claims against the City. He has a legal right under the pension plan because he doesn't see anything anywhere that says he can't collect it on his 25th anniversary.

President Rosenberg stated that what Alicea was seeking in his grievance is to be reinstated to his job. They can't retire him and then reinstate him.

Commissioner Klein stated that even though he was terminated under the contract he has a right to collect his pension.

Attorney Mitola stated that he has a right to seek his pension; he earned that, but the inconsistency is he has a pending grievance and he's seeking to be reinstated.

Attorney Bohannon stated that it was his understanding that Mr. Alicea was applying for a regular retirement. President Rosenberg answered that he changed it on the Agenda, it's a Pro Rata Retirement because it's his 25th anniversary, but he doesn't have 25 years so it's a reduced amount.

Attorney Bohannon replied that it was 42% and at this point in time, he is otherwise eligible to request that retirement. He certainly did not have an objection to that, but his only concern would be that Mr. Alicea does have a grievance pending before the State Board of Mediation and Arbitration. As he understood it, he is in part requesting reinstatement to his employment based upon what he considers to be wrongful termination. If Mr. Alicea is requesting a retirement from the Bridgeport Fire Department, he believes that that would truncate any claim for reinstatement. Obviously, if there were a wrongful termination, he could still be advancing a claim for back wages in connection with the period from the time of his termination to the time he elected to take his retirement.

President Rosenberg stated but not a reinstatement. Attorney Bohannon responded but not a reinstatement correct. That's the only clarification he wanted Mr. Alicea to make.

Union President Whitbread stated that his claim is not for back pension. His claim is for back pay. Now, whether he wins or loses, that doesn't have anything to do with what he is applying for tonight. That goes forward from that date. He is still retiring. If he wins his claim, the only difference will be he would have to come back here with that settlement and ask for the increase from the 42 to the 50%, so the Board shouldn't be stopping him from making the claim right now for his pension.

President Rosenberg responded that the record should show that the reinstatement is not going to be part of it.

Attorney Mitola stated to Union President Whitbread that they were seeking reinstatement in the grievance. Union President Whitbread responded that in the grievance he asked to be made whole and that means a whole bunch of things.

President Rosenberg stated that the problem is if he is waiving the reinstatement not waiving the right to his lawful termination for the back wages and to be made whole for the 50%, he would be entitled to that assuming that he won that, but at the same time, he thought the record has to show that in the event that he won that, they are not going to have a retiree come back here and start working again.

Attorney Bohannon responded that as he understood the request, Mr. Alicea would be requesting reinstatement; it would be retroactive reinstatement from the date of his termination through the date that he elected his retirement. So if that happens if he were reinstated retroactively from the period of his termination up and through this evening when his retirement is granted then that would get him an additional 4 years and it would have an impact upon his pension.

President Rosenberg stated that he would still be retired and couldn't return back to work. Attorney Bohannon stated that what happens if the Labor Board does say okay we're going to reinstate you, now he's retired from the Department, so that reinstatement would only cover a period from the date of termination up and to the date of the retirement.

Attorney Bohannon said Mr. Whitbread stepped outside to consult with Mr. Alicea and he wants to make sure that the Trustees have a clarification on that matter so they don't have an issue in the future.

President Rosenberg asked so the clarification you want is that he would waive his right to coming back to work. Attorney Bohannon responded that's it. In other words, he may win retroactive reinstatement to cover that period which will affect his back pay damages and would affect the amount of his pension, but it would not permit him to come back if he accepts this request for a retirement.

Commissioner Klein wants to be sure that he states his understanding of that on the record.

Commissioner Lee asked to apply for a reinstatement, he really doesn't want to come back, and he just wants to get retroactive.

Attorney Bohannon responded that if the SBMA who is hearing this case says we think you were wrongfully terminated and what will happen then they'll say we're going to give you back pay damages from the date that you were terminated up until the date you return to work. They won't know that he's not returning to work, so what would happen is any retroactive relief would come from the day he was terminated up and through the date that you approve his retirement.

Commissioner Rodriguez asked and then he would have to come back here for just the other per cent. Attorney Bohannon responded that's it, he would come back here for just his pension.

Union President Whitbread and Mr. Alicea came back into the meeting.

Union President Whitbread represented that Manny is retiring regardless of the outcome, all they were looking for still in the case is for reinstatement, but it will be reinstatement to show his record is clean and that he was an employee for 25 years and he will not be seeking anything beyond this. So you retire him now, the only possible repercussions from this is if we prevail in the case, he will come back here and ask for his pension to be adjusted for the 50% and the 25 years.

Commissioner Klein stated for the record do you understand what Mr. Whitbread just explained.

Mr. Alicea responded exactly; I'm settling for 42% now and down the road I'm looking for my 50%, 25 years, with my record clean, I'm retired, not coming back to work.

Union President Whitbread stated that he wants to retire effective today regardless of the outcome this will be his retirement day.

Commissioner Klein motioned to grant a Pro Rata Regular Pension request to former FI Manuel Alicea effective February 15, 2012, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Lee seconded and the Board passed it unanimously.

4. Entertain a motion to grant a Line of Duty Disability Pension Request to former Captain Nicholas Novia, (Terminated 7/29/08) effective July 29, 2008, and refer to the Board of Trustees, Pension Plan B, for implementation.

Chief Rooney represented that Nicholas Novia was being sent for an IME and that the request be tabled to next month.

Commissioner Meszoros motioned to table a Line of Duty Disability Pension Request to former Captain Nicholas Novia, (Terminated 7/29/08); Commissioner Rodriguez seconded and the Board passed it unanimously.

5. Entertain a motion to grant a Pro Rata Pension Request to former FI Frank Gerardi, (Terminated 1/25/08), effective February 7, 2012, and refer to the Board of Trustees, Pension Plan B, for implementation.

Treasurer Morley requested it be postponed until the next agenda because Frank Gerardi is not here and he cannot go on record that he understands that he will not be rehired if he wins his case, he will not come back and we don't want to move forward without him acknowledging that.

Chief Rooney stated that he just has to agree to that because he lost his case at the State Labor Board. Attorney Mitola stated that he has a pending Application to Vacate the Arbitration Award.

Commissioner Klein motioned to table the request until next month for a Pro Rata Pension Request to former FI Frank Gerardi, (Terminated 1/25/08); Commissioner Ana Garcia seconded and the Board passed it unanimously.

6. Local 834 Grievance 2012-1; FF Dennis Rodgerson, OT Hours.

Union President Whitbread represented that the grievance is being moved to the State.

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

a. FF John McKelvie (B)

Commissioner Meszoros motioned to go into executive session at 6:25 p.m.; Commissioner Klein seconded and the Board passed it unanimously.

Commissioner Klein motioned to end executive session at 6:29 p.m.; Commissioner Meszoros seconded and the Board passed it unanimously.

FF McKelvie reported that he has an appointment with his doctor tomorrow and should be back to work.

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

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

10. Policy and Procedure review.

Chief Rooney passed out a new SOP - Radio Communications requesting that the Commissioners take home and read and be prepared to discuss and vote at next month's meeting.

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

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

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