

**November 28, 2012**  
**Regular Meeting Board of Fire Commissioners**

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

Present: President S. Rosenberg, Vice President J. Klein, Commissioners M. Lee, J. Meszoros, Fire Chief B. Rooney

Absent: Commissioner D. Garcia

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

**Old Business:**

1. Local 834-Grievance 2011-24; LT Marc Strickland, Retirement Benefits.

Robert Whitbread and Phil White to set a date to go over finalization of Union Contract. There is a language issue. The Union has a copy of the contract, but it is not signed yet. Needs to have language fixed in some areas and some parts that are wrong. Needs to have a meeting with the City and come to a resolution. Commissioner Lee stated that this should have been taken care of a long time ago and LT Strickland shouldn't have to wait this long. Phil White confirms that the City is trying to finalize the language with the Union and until all parties agree and are satisfied with the language no one is going to sign it. If we have portions of the agreement sufficient to resolve this grievance, I'd be more than happy to talk to you about it. It's unfair to him to keep him hanging if we already know where the grievance will go. The Department with the support of Labor Relations denied the grievance.

Commissioner Klein mentioned that this was filed approximately 14 months ago. President Rosenberg feels that a decision cannot be made without the completed contract. Commissioner Meszoros asked if this can affect any other fire fighters. President Rosenberg states that this fell into an area window. We can't come to an uninformed decision. We have to have the contract that he was governed under at the time of the grievance. I think the question was did he come under the old contract or the new contract. LT Strickland confirmed that was his position. When he retired, the contract wasn't complete. President Rosenberg thinks that LT Strickland is frustrated, Mr. Whitbread is frustrated and the Commission is frustrated.

Commissioner Klein asks if the City Attorney's office is in a position to reply to this.

Attorney Mitola is not sure what the issue is. The Union feels his retirement comes under Plan B. Attorney Mitola offered to sit with Mr. Whitbread and Mr. White to work on this with them.

Commissioner Klein motioned to table until December with request for John Mitola to sit with the Union and Labor Relations, Commissioner Meszoros seconded and the Board passed it unanimously.

2. Entertain a motion to grant a Widow's Line of Duty Disability Pension Request to Joan McCullough, effective July 13, 2011 and refer to the Board of Trustees, Pension Plan A, for implementation.

Voted on once and denied and it was put back on the agenda because Attorney Riccio said that she wanted to present her client's case. No action taken. Attorney Riccio not present.

3. Local 834 Grievance 2012-12; FF James Boyle, Article 5 Disciplinary Action.

Mr. Whitbread states this grievance was filed on behalf of FF Boyle. He was brought in by the Department for something that happened off-duty. It was a family issue and did not affect the Department, he lost no time, no publicity, nothing. This is something that somebody searched out or brought to the Department. He was charged with stuff that has to do with on-duty conduct. Asking that this be removed from his file.

Commissioner Klein asked if FF Boyle is present, and Mr. Whitbread stated that he didn't need to be here, that he knew everything that needs to be said. President Rosenberg stated that he has said this in the past that people are doing themselves a disservice by not being here, they can't defend themselves. Mr. Whitbread stated that this was an off-duty event and should not have anything to do with work.

FF Boyle was arrested for domestic violence. Chief Rooney states that when they receive information such as this, they act on it. Its conduct unbecoming a firefighter whether it's on duty or off duty behavior. We're held to a higher standard and when we get a report that somebody was arrested we look into it and determine whether or not he violated any of our rules or ethic policies. We feel he did.

President Rosenberg states that over the years he has been on the Commission there has been numerous precedence where some firefighters have gotten into trouble with the law. This is not something new.

Mr. Whitbread asked what material was given to the commissioners to review. Deputy Chief Grace said it was the same material used at the Due Process Hearing.

Commissioner Klein asked how it came to the attention of the Department. Chief Rooney stated that he received an email from the Police Department. Somebody sent it, but he doesn't remember who. President Rosenberg asked if it was standard procedure for the Police Department to do that. Chief Rooney stated sometimes. Mr. Whitbread is making a request for a copy of the email. FF Boyle received a verbal warning for this and that is what he wants removed.

President Rosenberg asked that if this arrest is thrown out in June, will that change anything. Chief Rooney stated nothing would change. Commissioner Klein said that it became known to the Chief, it was published, and the case is public knowledge. He doesn't think a verbal warning is too stern a disciplinary measure. The Chief also feels like they have to cover themselves in case this happens again.

Mr. Whitbread wants to know what if he was falsely arrested, and reiterated that it didn't affect his job. Commissioner Klein mentioned it's the conduct and that the Fire Department contract has higher standards, "all members of the Department shall conduct themselves at all times in such a manner that will reflect credit to themselves and the department". That applies to firefighters. That's the higher standard firefighters are held to.

Commissioner Lee feels a verbal warning is a small amount to pay for this. And again, President Rosenberg stated that FF Boyle did a disservice by not coming.

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

#### **New Business:**

1. Communications:

Robert Whitbread wants to but a complaint in on of how slow things get processed. He sent a letter to Chief Petrucelli on 10/23/12, It's not on the agenda. This is a sample of how things don't move fast enough around here. I made a request for information going back to around March on Girardi and again on this letter in October, and now it's the end of November. Attorney Mitola said that Attorney Bohannon is handling that and the legal proceedings are still in process. Attorney Mitola suggested that they talk to his lawyer. Until they come before the Board to state that they do not plan to return to their jobs, nothing can be done.

2. Entertain a motion to remove Jean Joan Gerlander, deceased October 24, 2012 from the Firefighters' Widows Pension list and refer to the Board of Trustees, Pension Plan A for implementation.

Commissioner Meszoros motioned to grant this motion; Commissioner Klein seconded and the Board passed it unanimously.

3. Entertain a motion to remove Retired FF Charles Calvert, deceased November 6, 2012, from the Firefighters' Pension list and refer to the Board of Trustees, Pension Plan A, for implementation.

Commissioner Meszoros motioned to grant this motion; Commissioner Klein seconded; the Board passed it unanimously.

4. Local 834 Grievance 2012-13: Class Action, Days Off for Captain Exam.

Robert Whitbread stated this was filed as a Class Action. The City puts out a list of who is eligible to take the exam; then they have to take vacation or personal time to take the test (some up to 3 days); and then about half were told that they weren't eligible to even take the test after they took the test. There was an action taken by the City that made some ineligible. We're asking that those that were deemed ineligible and had used vacation/personal time to take this test be reimbursed.

Phil White states that Labor Relations requests that the Commissioners deny this Class Action, it was a voluntary action.

Chief Rooney said that a judge made the decision of who was ineligible. It was a time and grade issue.

Mr. Whitbread stated that there was a disagreement as to which date was to be used to be eligible to take the test. They went from the one they used to the one that the judge said they had to use.

Chief Rooney stated that both sides brought it to the judge and it is still in litigation.

Commissioner Klein motioned to table this motion until after the appeal is resolved; Commissioner Lee seconded; the Board passed it unanimously.

5. Local 834 Grievance 2012-15; Drug Test (hair).

Robert Whitbread said that an employee was asked to take a hair follicle drug test which is in violation of our drug policy.

Robert Whitbread said this is an open request that hair follicle drug testing is not to be used. Their random drug testing, according to the Union Contract, states a urine test is to be used using a SAMSA lab.

Phil White, on behalf of Labor Relations asked to deny this grievance since this test was administered as part of a medical examination and the employee signed a voluntary consent for a hair follicle test.

Robert Whitbread stated that the order was issued from the Department for the employee to have a hair follicle test or he would be issued at a higher level.

President Rosenberg asked if we have the test results. Mr. Whitbread said that it doesn't matter. President Rosenberg stated they just want to know the outcome and Mr. Whitbread stated that it was none of his business. Commissioner Lee asked Mr. Whitbread what is wrong with him tonight. President Rosenberg asked if the individual suffered some discipline and Mr. Whitbread said yes. Another one will be coming.

This hair follicle drug test was done as part of an Independent Medical Examination (IME). President Rosenberg states that if this is needed for the IME physician to see if the employee is fit for service, the physician needs to use

whatever he needs to make this decision. You can't tell the doctor how to do his job.

Attorney Mitola stated that this testing was not done as a random drug test but as part of an IME. The doctor needs to find out what needs to be done from a testing standpoint to determine whether he or she is fit for duty. Random drug testing is a completely different scenario.

Commissioner Klein asked Mr. Whitbread what he wants. Mr. Whitbread wants the results thrown out and this type of testing not to be done again. President Rosenberg said they can't do that. Mr. Whitbread also states that the doctor works for the hospital and the Department; he's not independent. President Rosenberg said that you can't give the protocol to the doctor what to do for an IME.

Mr. Whitbread states that when this doctor was first picked to perform IME's, he stated that he told the Department that he wasn't an Independent Medical Examiner, he works for a hospital that the Department deals with and sends its members to, so there's no way he's independent.

President Rosenberg stated that this was not random drug testing, it has nothing to do with the drug policy it has to do with an IME. It is part of an IME and it's more than permissible.

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

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

- a. CAPT Paul Cocca (B) – returned 11/19/12 on light duty.
- b. FF Joel Christy (B) – returned 11/16/12 on full duty.

7. Entertain a motion to accept the Report of the Sick and Injury.

Commissioner Meszoros motioned to accept this motion; Commissioner Klein seconded and the Board passed it unanimously.

8. Entertain a motion to accept the Payroll Register.

Commissioner Meszoros motioned to accept the payroll as written; Commissioner Lee seconded and the Board passed it unanimously.

9. Policy and Procedure review.

None.

There being nothing further to come before the Board a motion to adjourn was made by Commissioner Meszoros; Commissioner Lee seconded and the Board agreed unanimously.

The meeting was adjourned at 7:09 p.m.