

FIRE PENSION BOARD
REGULAR MEETING MINUTES
February 14, 2019

The Fire Pension Board of Trustees held a Regular meeting on Thursday, February 14, 2019 at 4:04 pm, at the City of New Smyrna Beach Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida.

ROLL CALL

The following members were in attendance:

Michael Kolody
Michael Lynn
David Newell
Jason McGuirk

Tom Lee, Chairman was not able to attend due to a conflict. In attendance were Charlie Mulfinger, Morgan Stanley Smith Barney, Scott Owens, Morgan Stanley Smith Barney, Andrew McIlvaine, Morgan Stanley Smith Barney, Patrick Donlan, Foster & Foster, Inc., Carol Hargy, Human Resources Director, and Claudia Rogers, Recording Secretary.

APPROVAL OF MINUTES

A motion was made by Jason McGuirk to approve the minutes of the Regular meeting held on August 9, 2018, seconded by Lt. Lynn. The motion passed unanimously.

PUBLIC PARTICIPATION

Lt. Roy Hodgins spoke about Senate Bill 1128 300 hour rule and counting the built in overtime towards the limit.

Mr. Robinson talked about how discretionary overtime hours are not a defined component of a member's monthly compensation. Mr. Robinson discussed the practice of "spiking" deliberately increasing the overtime that one works in addition to one's regularly scheduled hours during the final years of employment to increase one's average final compensation. Due to the potential harmful effect upon retirement systems the limit of discretionary overtime hours was limited to 300.

Mr. Robinson with all that being said the Division of Retirement said the parties can determine this during collective bargaining agreements, however, unless this Board does not sit as a judge what the parties agreed to. We have to judge what the parties agreed based on the Ordinance. Our opinion is that the Ordinance does not reflect any understanding between the parties and that the built in overtime would count toward the 300 hour limit.

Lt. Hodgins asked for clarification of what counts toward the 300 hour limit such as straight time overtime. Mr. Robinson said he had not looked into that question as it had not been brought up to him prior but he

would look into. Lt. Hodgins said he would like this looked into before they make any decisions which will affect all the membership.

BC Chris Dymond spoke about receiving straight time up to 300 hours and having that count toward his pension as it was not paid at time and one half as stated in the Union contract. BC Dymond is not covered by the Union contract and he questioned the straight time counting toward the 300 hour limit. BC Dymond wanted to know how his retirement would be calculated at the end of his career. Mr. Robinson said he could not respond to that tonight and he felt this was going to become a rather complex issue.

Mr. Robinson said he was not sure how the city was communicating with the board in regards to this issue and would need to be looked into before he was able to respond.

David Newell asked Mrs. Hargy how this was currently being handled. Mrs. Hargy said any hours being paid at time and one-half were being counted toward the 300 hour threshold. Mrs. Hargy continued by stating this was how it was bargained back in 2012. All hours worked over the 159 hour threshold paid at time and one-half were being counted toward the 300 hours. The built in over time is being counted toward the 300 hours and no straight time overtime hours were being counted for bargaining unit members.

Lt. Lynn provided a scenario saying if he worked his regular shift for the first two weeks and was paid straight time and then in the next two weeks he received half time for 9 hours were the straight time hours being counted. Mrs. Hargy said we work on a 21-day cycle and explained that if all shifts are worked and they received the 9 hours of built in overtime then those 9 hours were counting toward the 300 hour limit. Lt. Lynn asked David Robinson if those were the hours he was saying should not count. Mr. Robinson replied yes. Mrs. Hargy said that is how it was negotiated back in 2012.

BC Crapps also talked about receiving straight time up to 300 hours and having this count toward his pension and asked if they are being disadvantaged because their hours are paid at straight time. Mrs. Hargy said you are not covered by the contract so your definition of overtime would be anything over your shift of 2912. It is not FLSA overtime but you are being paid for all hours over your shift and being counted toward the 300 hour limit.

Mr. Robinson said overtime can be mean a lot of different things for a lot of different purposes. BC Crapps said they work alongside them vote into and pay into the same pension program and at the end of the day we will have a smaller pension. BC Crapps felt they were in a gray area and when it comes to this issue. David Newell asked why the Battalion chiefs were being treated differently. Mrs. Hargy said they are in an exempt position. Mrs. Hargy continued by saying like I am in an exempt position but do not receive any compensation for working overtime, however, the Battalions do receive straight time overtime for any hours worked over their shift. BC Crapps asked what FLSA exempt laws are we being covered under. BC Crapps said this is probably a Human Resources question. David Robinson agreed that would be a HR question, however, he would take a look at it.

Jason McGuirk said he felt once Public Participation was closed the Chairman should move Item G up to continue to discuss this.

Lt. Don Wiech spoke about Senate Bill 1128 300 hour rule and counting the built in overtime towards the limit. Lt. Wiech said the city had in the past had been assured that those hours were not being counted toward the 300 hour limit and that is why we are questioning this now.

David Newell closed Public Participation. Jason McGuirk made a motion to move Item G up, the motion was seconded by Lt. Lynn. The motion passed unanimously.

Acting Chairman David Newell moved up Item G. Attorney Reports and Communications to allow for David Robinson, Pension Attorney, response to the above members comments. Mr. Robinson said he felt he had addressed the concerns during Public Participation and deferred to his colleague.

Janice Rustin, City Pension Attorney from the Firm of Lewis Longman Walker (LLW), provided the city response to the Sugarman & Susskind Pensionable Overtime Opinion letter distributing their 300 Hour Overtime Cap letter to the Board. Ms. Rustin said it was their opinion that any action taken by the pension board to interpret the overtime provision of the retirement plan in a manner different from what was negotiated by the parties would be an unconstitutional violation of the collective bargaining rights under Florida law.

Ms. Rustin referred the Board Members to copies of minutes taken at the negotiation sessions back in 2011 where it clearly states what was negotiated by in 2011. Ms. Rustin read "Roy Hodgins asked for clarification on the 300 hours of overtime rule. Mrs. Hargy advised that only time and a half overtime compensation counts toward the 300 hour limit. Any overtime paid at straight time is not included".

Ms. Rustin said since the collective bargaining agreement was approved in 2012 this has been the practice used. Ms. Rustin said fast forward to the current collective bargaining agreement negotiations the City has agreed to make changes and not count those hours toward the 300 hour cap effective October 1, 2018. The Union offered it being retroactive to 2012 and the City rejected that offer.

Ms. Rustin said the Pension Board does not have the authority to apply these changes retroactively to 2012 because the parties did not agree to that. Ms. Rustin said the Board cannot undo the past practices of the city in this matter. Mr. Robinson said he agreed that the Board does not have the right to interfere with the collective bargaining rights of the employees. The Board does not have the authority to interpret the bargaining history between the parties. The Board can interpret the Florida Statute, Florida law and how they apply to our Ordinance.

Mr. Robinson said you are asking us to interpret bargaining history which is outside the authority of the board and is the authority of an arbitrator. Mr. Robinson appreciated the history given but said whatever interpretation the Board uses it should not be based on collective bargaining and what is presented in the content of the LLW letter but based on the Ordinance. Ms. Rustin replied saying past practice is a part of the collective bargaining agreement. Mr. Robinson said past practice is not part of the Ordinance and that this Board cannot make any determinations on the intent of collective bargaining agreements. Ms. Rustin said it is clear what the past practice was and that this Board cannot take an interpretation any different than what is the past practice of the city.

Lt. Lynn asked so we are still waiting on the interpretation of the Ordinance. Mr. Robinson replied saying this Board can make decisions on how we are going to interpret things going forward. However, we still have the issue of those individuals who have retired since 2012. 2012 may not be the date of interest to us it would be the date of the first bargaining agreement which went into effect in after the law change. There may be individuals who already retired and we need to take a look at those cases and how their retirement was calculated because the issue has never been raised. We also need to take a look at the Battalion Chiefs and those individuals who are part of the collective bargaining agreement.

Mr. Robinson read Senate Bill 1128 as part of Chapter 112. What we are trying to interpret is what overtime means for the purposes of Chapter 112.

Mr. Robinson said it is their opinion the built in overtime was not included as non-discretionary overtime. Mrs. Hargy replied that is not true, it was negotiated, it is in the collective bargaining agreement with the definition of overtime in Section 34. This has been in the bargaining agreement and this is what has been followed. Mr. Robinson said it is in the bargaining agreement and that is what the city must follow but the Board must follow the Ordinance.

Mr. Robinson wanted to make it clear that the Board has no interest in the outcome one way or another this Board has a very clear legal mandate to enforce the Ordinance and Statute. Since this issue has been brought before us we are now required to make an interpretation of the Ordinance and Statute. It is our fiduciary duty to make this determination based on the information available to us not to include collective bargaining negotiations or agreements. There is nothing in our Ordinance that reflects that the discretionary overtime was to be counted.

Ms. Rustin replied asking the Board not to ignore the collective bargaining agreement when making their interpretation.

Jason McGuirk felt he had not enough information to make any determination. Mr. Robinson said this issue is much more complex than what we thought it was going to be. Jason McGuirk referred to the statement of the Board making this request from the Pension attorney stated in their letter. Jason McGuirk asked if the Board directed Mr. Robinson to do so. Mr. Robinson replied saying the Chairman, Mr. Lee, asked for the determination. Jason McGuirk said I do not recall this being an issue and the Board asking for your interpretation.

Jason McGuirk said he felt he needed more history and information before he could make any determination because this was all very new and confusing to him and some of the firefighters. Mr. Robinson said the Board could make a determination today as to what does overtime mean Chapter 2011-216 and our Ordinance. Mr. Robinson said you have all the information needed to make that determination cited in my letter. Jason McGuirk said I do not have enough information at this meeting to make that determination are you saying that I do? Mr. Robinson replied saying yes on the basis of our letter and interpretation.

Jason McGuirk the information I have is your letter and why are we up here for why are we up here if you made that determination. The attorney is not authorized to make the decision. We can make recommendation and interpretations it is up to the Board to make the decision. Jason McGuirk did not feel a one and a half page letter will help me make a determination.

Michael Kolody said he felt we are trying to interpretation of the contract agreed upon by the city, union and city commission. Mr. Robinson replied no it is determination based on the Statute and the Ordinance. Michael Kolody said and how that is applied. Since 2012 it has been done one way and the union does not necessarily agree with at this point. I think this should be made by the full commission. The pension board is here to make decisions on investments distributed upon retirement, etc. I thought that is mainly the focus. Mr. Robinson said part of your duties is implementing the Ordinance and interpreting the Ordinance is part of your authority. Mr. Robinson said it is exclusively the Boards' determination on the definitions of overtime is in the Ordinance.

David Newell agreed with Jason McGuirk a Workshop to be set up to make sure all the Board members have a clear understanding of the issue before they can address further. Jason McGuirk felt as if he was being pulled into contract discussions. Mr. Robinson said if a new Ordinance was put in place which clearly defined overtime then it would be easy for the Board to interpret the new Ordinance.

Mr. Patrick Donlan said if the Board did not want to make a determination today and if any retiree needed an adjustment made to their calculation that could be done in the future. This has happened in the past with the Police Pension and it is something that can be done six months from now.

Mr. Hargy said due to the complexity of the issue and what the issue is currently have a tentative agreement changing the definition of overtime effective 10/1/18 and will be presented to a union vote within the next three days. The issue of what happened between 2012 and 2018 can be addressed in the future. If the definition is changed I don't want to hold up a contract waiting for a special meeting or workshop. Mrs. Hargy said the proposal is even more generous than what the Florida Statute says.

Jason McGuirk asked what his limitations are if he wanted to speak to some of the affected firefighters. Mr. Robinson said you could speak to the firefighters just not with another Board member unless it was at a noticed meeting. Jason McGuirk would like to take his time and gather as much information and documentation so he can make an informed decision.

BC Dymond said we are talking about contracts and I am not a voting member of the contract. He felt he was penalized for his decision to take a promotion to Battalion Chief. I don't care how long this takes and this affects myself and my family. BC Dymond talked about how other fire Battalion Chiefs in other entities are paid time and one-half. Please don't tell me I am not doing the same job as the others. I want to be included in the Workshop and I don't want to be discriminated against when it comes to pension.

David Robinson discussed the Continuing Education school for trustees will be held in Tallahassee from April 30th to May 2nd. He also said that the legislative session is coming soon and will see if any upcoming bills will affect our plan or not.

Mrs. Rogers asked the Chairman if he wanted to defer the (G) (3) Beneficiary predeceasing member after selecting DROP retirement option as this was added by Tom Lee, chairman due to the fact he was not able to attend. David Newell said yes to defer that time to the next meeting.

David Newell finished Attorney Reports asking if the proposed meeting dates were okay with all the Board members. Mrs. Rogers advised the August 15th date was also the week of Volusia League of Cities Annual Conference which means the Commissioners on the Board may not be able to attend. Mrs. Rogers can contact Sugarman and Susskind to have the date changed. Mr. Robinson said he would look into alternate dates in which some of his other Boards will be meeting.

David Newell talked about setting up a Workshop to discuss everything involved. Jason McGuirk agreed he would like to have all the information in front of him and be able to discuss with firefighters before making any determination. Jason McGuirk said Mrs. Rogers could send out some emails to set up the date for the Workshop. Michael Kolody said he was understanding there was a change proposed to the definition and was that provided to the Commission. Mrs. Hargy replied saying if it is approved then it would be provided to the Commission for adoption. Michael Kolody wanted to know when. Mrs. Hargy said that depends on when the vote comes through. Someone from the audience said the Union was not voting. Mrs. Hargy said then it will not be coming to the Commission. Michael Kolody thought that

was a very important part of this. Mr. Robinson said that would be applied prospectively and the issue of retired.

APPROVAL OF FEES

Lt. Lynn made a motion to approve payment of invoices from Sugarman & Susskind, PA and Foster & Foster, Inc., Tom Lee conference reimbursement, Lt. Lynn conference reimbursement for a total amount of \$19,520.03, seconded by Jason McGuirk. The motion passed unanimously.

PRESENTATION OF QUARTERLY RESULTS-MORGANSTANLEY SMITHBARNEY

Charlie Mulfinger talked about how the Pine Grove Hedge fund began paying back as discussed at the last meeting the Board needed to make a determination of where to invest those funds.

Charlie Mulfinger said at the end of the fiscal year the plan was up 8.57% net of fees which would have been presented at the November 2018 meeting if it had not been cancelled.

Andrew McIlvaine and Scott Owens presented the Economic update and the Quarterly financial results. The fund value on December 31, 2018 was \$20,454,698 sustained a net loss of \$1,862,480 Gross of Fees and \$1,909,802 Net of Fees in the quarter. A Detailed Quarterly Performance Evaluation report document on file with the City.

Mr. Mulfinger talked about the portfolio and the choices that needed to be made due to the Pine Grove Hedge fund refunding money to the fund. Should the funds be invested in bonds, or a portion to bonds and a portion to Stocks? The suggestion we have is to stick with what you have and find less volatile or liquid Hedge funds. Lt. Lynn asked if the suggestion is to divide up between the two different options presented. Mr. Mulfinger said yes that is what they are recommending. Lt. Lynn made a motion based on the recommendation of the investment advisor, seconded by Michael Kolody. The motion passed unanimously.

Charlie Mulfinger discussed the handout of updated Investment Statement. After some concerns noted by Jason McGuirk it was determined the Pension attorney will be review the document and approval was deferred to next regular meeting.

FOSTER & FOSTER ACTUARIAL VALUATION REPORT

Patrick Donlan presented the Annual Actuarial Valuation report. Michael Kolody made a motion to approve the report with the understanding to move the assumption rate down to 7.8%, seconded by Lt. Lynn. The motion passed unanimously. The detailed report is on file with the City.

BOARD REPORTS AND COMMUNICATIONS

All items were deferred to the next meeting when the Chairman will be present as these items we added to the Agenda by the Chairman.

David Newell's Board term had expired and could not be addressed as the November 2018 meeting was cancelled. Jason McGuirk made a motion to re-appointment David Newell as the Board's fifth member, seconded by Lt. Lynn. The motion passed unanimously.

Mrs. Rogers presented the FY2018 Actual Board Expenses document and FY2019 Proposed Budget document to the Board members. A motion was made by Lt. Lynn to approve the Administrative Expenses for FY2019, seconded by Jason McGuirk. The motion passed unanimously.

CITY REPORTS AND COMMUNICATIONS

None.

ATTORNEY REPORTS AND COMMUNICATIONS

Agenda Item moved up during the meeting to after Public Participation.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:06 pm.