

FIRE PENSION BOARD  
SPECIAL WORKSHOP MINUTES  
April 17, 2019

The Fire Pension Board of Trustees held a Special meeting on Wednesday, April 17, 2019 at 2:09 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  
Tom Lee  
Michael Lynn  
David Newell  
Jason McGuirk

In attendance were Carol Hargy, Human Resources Director, and Claudia Rogers, Recording Secretary.

APPROVAL OF SUMMARY OF ACTION

A motion was made by David Newell to approve the Summary of Action of the Regular meeting held on February 14, 2019, seconded by Lt. Lynn. The motion passed unanimously.

PUBLIC PARTICIPATION

None.

SPECIAL ITEMS OF BUSINESS

Mr. Pedro Herrera, Sugarman & Susskind Attorney, talked about the Sugarman & Susskind Pensionable Overtime Opinion letter dated October 24, 2018. Mr. Herrera said the letter refers to the statutory requirement of 300 hours of overtime being the max allowable for pension purposes. What is in question is what constitutes overtime. Chapter 175 or our Ordinance does not define overtime. It is the Board's responsibility to interpret the provisions of the Ordinance if it is unclear and/or ambiguous.

This opinion discusses discretionary and non-discretionary or what is required under Fair Labor Standards Act (FLSA). Our opinion is hours that are comprised in the regularly scheduled shifts of members of the plan are not subject to the 300 hour maximum. The legislature did not define the terms and left it up to the bargaining unit, its members and plan sponsor to define those terms if need be.

Mr. Herrera talked about the legislative reasons for implementing this 300 hour overtime cap which related to the predictability of the actuarial funding and "spiking" – deliberately increasing the overtime that one works during the final years of one's career for the purpose of to increasing one's average final compensation. Ultimately the reasons for this cap was to put a cap on voluntary overtime not hours worked not hours worked as part of one's regular shift no matter how the hours were paid.

Mr. Herrera stated it is not the job of the Board to interpret collective bargaining history, collective bargaining agreement or the intent. If the collective bargaining agreement or the Ordinance were more precise that is what the Board could rely on, however, that is not the case. Lewis, Longman and Walker letter states the Board would be violating 447.

Jason McGuirk said you are asking us to make an interpretation but then not make an interpretation. Mr. Herrera replied an interpretation of the Ordinance not of the collective bargaining agreement. Mr. McGuirk said he is still confused on what they are supposed to determine. Mr. Herrera said the way this has been administered for the past six years using non-discretionary overtime hours as part of the 300 hour cap. It was his understanding that the Board did not know this. Mr. McGuirk replied you just said the Ordinance was silent on this and that we cannot make a determination using the collective bargaining unit so what are we supposed to use to make this determination?

Mr. McGuirk asked how did we get here and why are we here talking about this issue. Mr. Herrera said they are here because these discussions took place during the current negotiations. The Union was unaware the non-discretionary hours were being used toward the 300 hour cap that this practice was not agreed to and that the Board was also unaware of how the cap was being administered. The Board asked his office to write an opinion letter. Mr. McGuirk replied your firm was asked for the opinion letter by a Board member and was not directed by the Board. I was not aware of any of this until I received the letter from your office.

Mr. McGuirk said this was a labor negotiation disagreement with the parties saying they did not agree to this. Mr. Herrera said they agreed to something and now the parties feel like they did not fully understand. Mr. McGuirk said at the beginning of this meeting you said we could not look at collective bargaining agreement to make a determination and simply looking at our Ordinance and what that has to do with overtime. This came before this Board because there was a disagreement during negotiations. It seems to me we are being asked to come between disagreements between the two negotiation parties. I am to look at the Ordinance but the Ordinance is silent on the issue.

Mr. Herrera said he is asking the Board to interpret the Ordinance not the collective bargaining agreement. We could or we would take into account something in writing from the parties on how this should be done. We have a vague collective bargaining agreement. If the collective bargaining agreement was clear and specific and the Ordinance was vague we could look at the collective bargaining agreement but that is not what we have here. The Ordinance is supposed to mirror what is collectively bargained. The collective bargaining agreement is not specific and it appears the members did not know what they agreed to.

Mr. Herrera said there are excerpts of the collective bargaining agreement included in the Lewis, Longman and Walker (LLW) letter, however, they do not address this issue of what overtime is counted toward the 300 hour cap. In our opinion this issue is not addressed in either the collective bargaining agreement or the Ordinance. I say in our opinion because you have a differing opinion. The specific provisions of how the overtime cap going to be applied is silent in both documents. It does not address which 300 hour count or will not count.

Mr. Herrera said it is not our position or role to decide who is right and who is wrong. Mr. McGuirk said we are being asked to make a determination based on our Ordinance which will affect one side or the other. Mr. Herrera agreed and said it was affect both parties. Mr. McGuirk said our determination will benefit one side or the other. Mr. Herrera said yes but that is by coincidence not by design.

Lt. Lynn said the Ordinance is silent so what are we trying to determine. Mr. Herrera said we tried to explain that in our opinion letter stating that the Ordinance does not specifically define overtime. Lt. Lynn said it does not go into any detail. Mr. Herrera agreed. Lt. Lynn said if this is not defined here then are we being asked to change the Ordinance. Mr. Herrera said preferably we would have an Ordinance with specific language that defines what overtime is and what is included in the 300 hour cap.

Lt. Lynn asked so are we being asked to change the city Ordinance? Mr. Herrera said no we are not able to change a city Ordinance. Mr. Herrera said the board has the sole and exclusive authority to administer the Ordinance. Mr. Herrera said he would be asking the city to change the Ordinance. The best case scenario for this Board is to have a clean Ordinance so that this Board has clean direction and is not taking a side. Absent that it is your job as the Board to interpret the Ordinance.

Mr. McGuirk said so when we come to a conclusion exactly what would I say I based my conclusion on. Mr. Herrera said you would base it on our opinion letter and the Ordinance. Mr. McGuirk said but we agree the Ordinance is silent. Mr. Herrera said yes but it has also been decided that it is your job as a Board to interpret the Ordinance due to State Statute.

Mr. Kolody said he realizes there is a distinction between the collective bargaining agreement and the Ordinance, I don't feel that is much more than a question of semantics. I don't see maybe the Ordinance left out some details but they did make a determination of not putting anything in there. I don't see where we can make a determination on this issue. I feel it would be for the two parties come back together and have them work it out. I think a recommendation for them to do that is the best avenue. Mr. Herrera agreed that definite direction is the best.

Mr. Kolody said they have been interpreting it this way for five to six years. Mr. Herrera said yes that is true but did the Board know about this interpretation. Mr. Kolody said I don't think that should be altered by this Board. Mr. Herrera said if it has been done incorrectly then it does not have to continue to be done incorrectly. Mr. Kolody said it is his position that he does not feel it is his right to determine if it has been done correctly or incorrectly.

Mr. McGuirk said this practice has been going on for five to six years and has anyone brought this up? Mr. McGuirk gave a scenario and his question was if it was supposed to be done one way and has not been done that way since the beginning and no one has said anything. Lt. Lee responded saying this has been going on since 2012 and has been discussed in meetings with the city which is why I feel we need to put this to rest. Mr. McGuirk said so you have brought this up to the city. Lt. Lee replied yes. Mr. McGuirk asked if there was any evidence. Lt. Lee said there are minutes from negotiations. Mr. Herrera said he felt the reason this wasn't raised before it that no one ever really notices.

Mr. McGuirk said how could they not know? Mr. Herrera said you really don't know until you go to retire. Mr. McGuirk asked if there was an annual report or something that goes out to members. The members do not get anything showing this information. Lt. Lynn said we get an annual report but it does not have any information on how the figures are arrived at. Lt. Lynn asked how this was done prior to 2012. Mr. Herrera said that is when the cap took affect. Lt. Lynn asked here at the city? Mr. Herrera said no the state law changed.

Mr. Jim Linn, Lewis, Longman and Walker Attorney, addressed the Board saying with the help of Janice Rustin, he wrote the response and provided their opinion on the 300 Hour Overtime Cap in a letter dated February 12, 2019.

Mr. Linn said the regular work schedule for firefighters is 168 hours worked in a 21-day work period or 2912 hours per year. Under the Fair Labor Standards Act (FLSA) time worked in excess of 159 hours is to be paid at time and one half. This means that the firefighters' normal work schedule of 168 hours includes 9 hours of "built-in" overtime every three weeks or 156 hours annually. This is what is in question here. Now and since 2012 has been counted toward the 300 hour cap.

The law states up to 300 hours per year in overtime compensation may be included. The law was clear as it states "as specified in the plan or collective bargaining agreement". What is clear is the plan does not define overtime but the collective bargaining agreement which has been in place for many years do very clearly define overtime. In Section 34 of the collective bargaining agreement since before 2012 and still does now states "Employees shall be paid overtime at the rate of time and one half for such time worked in excess of one hundred fifty nine (159) hours of work in the twenty-one (21) day work period".

Mr. Linn continued by saying consistent with that definition and the way the 300 hour cap has been applied since 2012 for all hours in excess of 159 regardless of whether the hours were included in a firefighter regular work schedule. During the last negotiations the city made a proposal to change that and the 9 hours of overtime would not be counted toward the cap effective October 1, 2018. The union response was that they wanted it back to 2012. The city did not agree to go back to 2012 too big of an economic cost and so there was no agreement. So the overtime 300 hour cap continued to be applied in the same manner.

Mr. Linn said this is not only done this way in the City of New Smyrna Beach but Edgewater, Holly Hill and Daytona Beach where Mr. Herrera is council. It is also clear that changes in pension must be collectively bargained and the pension board cannot change the terms of a collectively bargained retirement plan. I do not believe the definition of overtime is vague or ambiguous in the collective bargaining agreement but includes a very clear definition of what overtime is. Mr. Linn said he felt all would prefer the Ordinance be clarified to specifically incorporate this definition. The city brought forth an Ordinance 58-19 expressly to bring the definition of overtime from the collective bargaining agreement and put it in the plan for both the Police Plan and the Fire Plan. The Police Union had no problem with that but the Fire Union did.

Mr. Linn said the pension board cannot lawfully change or apply any changes to past practice of how the 300 hour overtime cap has been as that exceed the authority of the pension board. This has a cost and you may have received what it would cost add to the liabilities of the plan if we were to start not counting towards the plan....Mr. McGuirk asked why is the cost something we need to know if we are trying to make a determination based on the Ordinance. Mr. Linn said the Board cannot take any action that changes the plan and increases the liabilities of the plan. Chapter 175 clearly states the Board cannot amend the provisions of the pension plan without the city's approval. Mr. Linn said Mr. Herrera is saying the Board can interpret the plan and affectively amends the benefits of the plan and results in increased costs.

Mr. Linn said Mr. Herrera is saying the Board can make an interpretation of the plan, which will change the plan with increased costs and it would never have to go before the City Commission. Mr. Herrera said if the Board were to make an interpretation of the plan whether it increase or decreases costs it is in their authority to do so. Mr. Linn said he felt the Board would exceed their authority by making a decision which amends the benefits of the plan. Mr. Herrera said he felt the Board had already made the interpretation in 2012 and he wasn't sure how it happened which cost the plan less money and that was okay but now we are saying it is not okay. Mr. Linn said any changes to the plan require an Ordinance by the City or it could be considered an Unfair Labor Practice.

Mr. Herrera re-read Section 34 saying the Section also states, “or for all hours worked in excess of their regularly scheduled shifts, provided the employee works at his/her regularly scheduled shifts during the two (2) week pay period” which he felt encompasses both. Mr. Herrera said it encompasses both discretionary and non-discretionary overtime. It does not in any way say how it is applied toward pension. Now if we are interpreting it a different way the Board is breaching or exceeding its authority.

Mr. McGuirk asked are you saying we should or should not change it. Mr. Herrera said it was his position that they should. The original application was inconsistent. The other places that were mentioned have specific language either in their plans or in their Ordinances. Mr. Herrera said it would be best to go back to 2012 and see what the mechanics of the application was at the time. Who put into the system...did the Board take action, if so then that would be easy, did the Actuary prepare a valuation, how did he do it and is that how payroll was adjusted. I don't know the answers to those questions.

Wayne Helsby, City Labor Attorney, from a labor law context my opinion is if the Board changes their interpretation of the formula it will be a violation of Chapter 447 and is going to be an unfair labor practice. The issue of pensions is a mandatory subject of bargaining, it must be negotiated with Unions. This applied if positive or negative for the employee. Change cannot just be granted because that would be unlawful. There is a process to go through with impasse and the City Commission resolves the impasse.

Mr. Helsby talked about Status Quo and past practice saying this is critical. The debate is the definition of overtime in the collective bargaining agreement, which I agree with Jim Linn and feel the definition of overtime is clear and unequivocal, however assume it is not. How has it been interpreted and how it has now becomes the Status Quo. For the Board to change now would change the Status Quo, the past practice. In my opinion you cannot do without first negotiating with the Union which is permissible and required.

Mr. Helsby continued by saying he has been doing this for 38 years and is familiar with the law. The Board has been interpreting it like it has been even if they did not know. This would be a violation of Chapter 447, and unfair labor practice and even maybe a violation of the contract. The missing puzzle piece is the collective bargaining agreement clear or not, is this past practice, has this been interpreted in a particular way if yes then it must be bargained. In my opinion negotiations must take place and the Board cannot change the Ordinance.

Mr. Linn added he just reviewed the impact statement for the pension improvement and it appears the Actuary interpreted the language in 2012 which is consistent with the interpretation of how it has been done. There would be no additional cost if any change was made today, so the Actuary in 2012 applied the 300 hour cap with what he understood the intent of how it should be applied.

Chairman Lee asked if the Board's responsibility was to the Ordinance regardless of the collective bargaining agreement. Mr. Herrera replied you cannot make a decision that would violate State law or the collective bargaining agreement. You rely on them when they provide specific language or practice. Chairman Lee asked Mr. Helsby if he discussed past practice, he replied yes. Chairman Lee asked Mr. Herrera if the Ordinance was their bible. Do we take into effect past practice. Mr. Herrera replied yes, which is why I mentioned....Did the Board direct payroll, what was the interpretation of the Board, the Board should have provided direction to the Actuary of the plan or the plan Administrator don't include and do include examples: sick time, educational incentive, etc. Mr. Helsby made a comment to Chairman Lee saying you do need to pay attention to past practice as it is a benefit to the employee to collectively bargain.

## PUBLIC PARTICIPATION

Lt. Hodgins said he felt they lost focus. There is a vague point of what is included in the 300 hours but the real question is about the people who have retired since 2012 and how their pension was calculated. They have not been provided any documentation of what goes into the calculation of their pension. There are many other pays than the 300 hours, holiday pay, overtime, overtime at straight time are pension contributions being made toward those hours. We ask the Board to provide us with how it was calculated.

Lt. Hodgins we stopped talking about the 300 hour cap because we thought we knew the way the 300 hours was being calculated. We thought it was all compensation over 2912, FLSA 300 hours of overtime, straight time overtime, scheduled holidays...are these calculated toward my pension. I am in DROP and still have not been provided with any figures of how my pension was calculated. I am given a figure this is what you get. Lt. said he had requested several times for the City to provide information on what was included in his pension calculation. Mr. Herrera told Mr. Hodgins he should make that request to the pension board. Mr. Herrera said if we are getting this request then the Board Actuary can provide that.

Lt. Hodgins asked if it was very clear to the City how the 300 hours was calculated they why are they (the City) trying to pass an Ordinance. Mr. Herrera said he thinks he has heard the city say the Ordinance is not as clear as it should be so they are trying to make it clearer. Chairman Lee explained the process of getting a calculation and how the city provides the data to the Actuary, the Actuary prepares the benefit information which is given to the employee.

Chairman Lee asked Carol Hargy, Human Resources Director to confirm the process. Mr. McGuirk said I think I understand what Roy is saying is there is not a lot of detail in what is included in that data. Lt. Hodgins agreed and said so how can we say it is past practice. 58-19 and how the Police department pension is different. He said he asked the city what was included.

Mr. McGuirk said so your understanding was the difference between the 168 and the 159...the 9 hours, was not being counted and the city says that is the way it was negotiated and this went on so long because you don't have the information to calculate yourself. Can you provide me if these issues were being addressed or were addressed where you brought this to the city. If there are all these discussions about this then I need to see the documentation. Lt. Hodgins said there should be minutes. Mr. McGuirk said are there emails, correspondence, audio because minutes are whose listening and who is taking them down.

Chairman Lee asked Carol Hargy about his personal request for a calculation of his pension and why it has taken so long. Mrs. Hargy explained that last year when the city put 2912 + 300 on the table but then took it off the table, payroll I think thought it went through. When it was realized we decided to do an audit of you and anyone who retired or entered DROP. This is a huge undertaking and we had to actually pull all the time sheets for the last five years. That is what has taken so long. One person has done it and another has reviewed it to see if there are any discrepancies.

Mr. Hargy talked about the letter received from Lee Dehner's office when this law went into effect. In fact, Lee Dehner's letter said their recommendation was to not include the built-in overtime, however, we negotiated the FLSA definition of overtime and that has been the practice since 2012. Mrs. Hargy said she has minutes, notes and even a member of the negotiating team at the time who can confirm what was negotiated.

The reason the City did an Ordinance was because when the city put the pension improvement of 2912 + 300 on the table that was when the labor side decided that was not what they thought we were doing. Mrs. Hargy said no and she went back and provided them with information on how they negotiated FLSA overtime. Mrs. Hargy said that is the definition in the collective bargaining agreement and that is the definition what has been used and our past practice.

Mrs. Hargy said when we made the offer to improve the agreement in 2018 the city got an actuarial valuation to see how much the benefit improvement would cost. Mrs. Hargy said since 2012 the FLSA definition of overtime has been used. It was only in 2018 when they put an improvement in did this issue arise. The intent back in 2012 and what was negotiated was to use the FLSA definition of overtime.

David Newell asked if there was a new contract since 2012 because he keeps hearing the date of 2018. Mrs. Hargy explained that the city put the 2912 + 300 on the table in 2018 during negotiations. The Union countered with it being retro to 2012. The city rejected the offer and that is when it was apparent there was a discrepancy. Mrs. Hargy said there have been discussions over the years where she thought Roy asked if he worked a scheduled holiday if those hours counted. Mrs. Hargy replied no we don't count scheduled holidays, we don't count straight time overtime, and we only count FLSA overtime.

Mr. Herrera asked Mrs. Hargy how that was determined that you don't count straight time overtime towards the cap. Mrs. Hargy said because only FLSA counts. Mr. Herrera asked so straight time overtime does not count towards the cap? Mrs. Hargy said no because we negotiated only FLSA overtime would count and the definition of overtime is in the collective bargaining agreement.

Mr. Herrera said he felt it was ambiguous from his perspective toward the pension. How did that distinguishing factor become apart? Mrs. Hargy replied when we negotiated we said it was the definition of FLSA toward the 300 hours. Anything paid at time and one half FLSA overtime was counted toward the 300. Mr. Herrera said do you have notes or anything? Mrs. Hargy said yes we have minutes and notes defining overtime pay and overtime pay is defined in the contract that is the way it has been calculated.

Mr. Herrera said you do define overtime but there is nothing that ties it to the pension. Mr. Herrera said why isn't straight time overtime counted? The city made a distinction for straight time overtime and that is not going to be counted against the cap. Mrs. Hargy said because we don't count straight time overtime towards the cap because we negotiated FLSA overtime any time paid at time and one half will count toward the 300 hours which the definition of overtime is defined in the contract. Mr. Herrera said but that is not what is in the Ordinance. Mrs. Hargy said that was our intent during negotiations that we were going to use the FLSA definition of overtime to count toward the 300 hours.

Mr. Herrera said both the City and the Union have put the Board in a bad position. The negotiations between both parties to agree to this was not added to the collective bargaining agreement. Mrs. Hargy said because we were using the definition of overtime in the contract.

Chairman Lee asked Mrs. Hargy about the Battalion Chiefs and how their 300 hours includes only straight time overtime. Mrs. Hargy said they are not eligible for FLSA and all their overtime is paid at straight time up to 300 hours. Mr. Herrera said see this is the questions I have. How was the city directed to make these interpretations? Mr. Herrera said payroll must have been told at some time how to process this. Mrs. Hargy said payroll was told to process using FLSA overtime. Mr. Herrera asked for minutes or communications to payroll from the Board on how to process. Mrs. Hargy said the Board would not tell payroll, Lee Dehner put together an Ordinance, with City Attorney review with Mayor & Commission

approval. Mr. Herrera said the Ordinance does not specify. How was payroll given direction how the practice was first implemented?

Chairman Lee asked Claudia Rogers to give Mr. Herrera information on how to include minutes and notes. Mrs. Hargy replied said part of the negotiation team is the Finance Director and they bring that information back to payroll. Was there some sort of direction to the Board from Actuary or from the City calculate this amount of overtime for this group, and this amount of time for this group. Mrs. Hargy said we don't have that kind of direction because the Finance department was at the table and would bring back the information to payroll. Mr. Herrera asked if the Board was aware of this. The Board members said no (there was no formal tally). Mr. Herrera said here is the disconnect to the Board. I am trying to get to that the Board was not aware and did not place.

Mrs. Hargy introduced Don Snell who was member of the negotiating team and the Fire Pension Board at the time. Mr. Snell said there was a big question towards the 300 hours and we wanted the 300 hours to be time and one half hours not straight time. That is when we negotiated to be FLSA overtime hours. It was probably an assumption that it was going to be 2912 but that was never specified and we did not think it but that is what was negotiated. I did sit on the Board and the negotiating team that year. There was no deep conversation about which hours were included that was kind of our misstep if you will. We definitely should have been clearer. Mrs. Hargy said she has copies of the minutes, recordings to provide to you if you want it.

Lt. Wiech I have been part of the negotiating team for quite some time now. 2912 + 300 has been discussed numerous times. Lt. Wiech talked about how they took a break during a negotiation session and Ellen from payroll came down and talked about how she calculated it. We let it go when it was assured to us it was being calculated the way we thought. Mr. Herrera said I think you may be saying something different than the man that was just here. Mr. Wiech said he was going back to 2012. I am going back to 2017, 2016 maybe 2015. Mr. Herrera said to the Board you do not need to get involved with a collective bargaining agreement. That is not your duty as the Board.

Mr. Herrera said it was not clear in the collective bargaining agreement. It seems as if you are getting out of your lane than trying to interpret intent between collective bargaining agreements. If the parties want to meet and give the Board something that would be fantastic.

Mrs. Hargy said the negotiation session the payroll clerk came down was November 21, 2017 and we have minutes and recordings. The reason she came down is because there was a question at the table about whether holiday pay counted and that is what she was addressing. In the minutes it states she said she does not count the scheduled holiday hours toward the 300 hours.

Ms. Melissa Smith addressed the board. Ms. Smith asked for clarification on discretionary and non-discretionary overtime. Ms. Smith said discretionary overtime is what we chose to work over our regular shift and non-discretionary overtime is the mandatory FLSA hours built into our regular work schedule. Ms. Smith said when we talk about overtime it is over the 2912 it is not the overtime required by FLSA law. We did not think the city was making these choices. The problem is there is no transparency. Ms. Smith talked about their time card and how the columns a listed as overtime and straight time overtime so to me it is all overtime. Ms. Smith saying Mr. McGuirk's example was misleading and misleading. Past practice does not mean we continue to follow the bad behavior or the misguided behavior. I do agree the language needs to be changed. I am not sure where that comes from. Ms. Smith said the Union side agreed to barter fiscally and this has been affecting Union members for 6+ years. I can look at my pay

stub and not know what was counted toward the 300 hours. How do I know that the payroll person took that holiday pay and did not count it toward the 300 hours? I would like to ask that we get clear language and more transparency for everyone working. Mr. McGuirk responded to Ms. Smith saying his analogy was to clarify that the members are not receiving the documentation. Ms. Smith agreed and said that was her opinion.

David Newell wanted to make a statement saying he felt it was imperative on both sides try to get the language cleared up as soon as possible whether that be by Ordinance or by collective bargaining agreement so all the members know what they are getting paid and what they agreed to.

Chairman Lee said he felt they were at the liberty of the membership and wants to see a modification or enhancement to the transparency on paychecks and get those out in a timely manner. Work on somehow the membership knows what is being counted toward their pension. Chairman Lee also said when someone puts in the paperwork for retirement or DROP they get that back in a timely manner and how was that calculation done. That is my recommendation back to the city.

Mr. McGuirk said whomever asked for paperwork, like Roy, should be given to him in a fair and reasonable time. Mr. McGuirk said he called for this workshop and felt it was beneficial to him because now he has a better understanding of what is going on. It seems there was a lot of misunderstanding on both sides. Mr. McGuirk said he felt the best outcome would be for the City and Fire department to work this out. I would not like to make a determination any time soon because there is a lot of confusion. For me to make a determination I would want the evidence of what has happened over the past several years. I am not so sure that this Board can give immediate relief. My recommendation is to move it back to these two entities and see if they can figure out some type of resolution.

Mr. Kolody said he listened to the Pension Attorney, did not necessarily agree with him, however he did make a comment about other plans and how their Ordinance clearly defines this issue. Mr. Kolody said he wanted to officially ask for the Commission/City to negotiate with the Union and make it clear what counts and what does not. Mr. Kolody said he was surprised that fire personnel did not get a statement per pay or at least annually of what is included. If this was done and there was an issue then you would know. It would put you in a better state of mind and then it would not be brought up several years later. I would like the Board to address this at their next regularly scheduled meeting.

Chairman Lee agreed with the Board members that the City Commission, City and Union need to come together and clean up the Ordinance. Mr. McGuirk said the Commission would not take action. Mr. McGuirk said to bring up a Statement which can be provided to the member as an action item at the next regular meeting.

Mr. Herrera agreed with the Board's recommendations, as well as, the suggestion to provide more transparency with at the very least annual statements which will show the employee what was included. This should also be done with any member entering DROP or Normal Retirement. The Board can work with the City and the Union on these items as they are part of the Boards authority. However, the rest of this should be worked out between the city and the Union.

Mr. Kolody said he would tell the rest of the Commission and the Mayor of these issues. Chairman Lee reminded the Board the next regular meeting is scheduled for May 9, 2019 at 4:00 pm. There being no further business the meeting was adjourned at 4:14 pm.