

Sec 10-8-15

**MINUTES OF THE BOYNTON BEACH POLICE OFFICERS' PENSION FUND
SPECIAL MEETING HELD ON TUESDAY, JULY 21, 2015, AT 10:30 A.M.
RENAISSANCE EXECUTIVE SUITES, SUITE 220, CONFERENCE ROOM 1
1500 GATEWAY BOULEVARD, BOYNTON BEACH, FLORIDA**

PRESENT:

Toby Athol, Chair
Jason Llopis, Secretary
Scott Caudell
Joe DeGuilio

Barbara LaDue, Pension Administrator
Bonni Jensen, Board Attorney

I. CALL TO ORDER

Chair Athol called the meeting to order at 10:34 a.m.

II. AGENDA APPROVAL

Ms. LaDue added Item A.2 to New Business Pension Amendment Ordinance on the multiplier

Motion

Mr. Llopis moved to approve the agenda as amended. Mr. Caudell seconded the motion that unanimously passed.

III. APPROVAL OF MINUTES – N/A

IV. FINANCIAL REPORTS:

None.

V. CORRESPONDENCE:

- 1) Engagement of GRS by City - Letter of July 8, 2015 by Jerry Taylor, Mayor

Attorney Jensen explained the Board has a request from the City to allow them to contract with GRS which requires the Board's consent. Attorney Jensen explained the Board would be allowing the City to use Pete Strong, Plan Actuary with GRS, who is familiar with the Plan and it would save the City about \$25,000. Since GRS provides actuary services for the Plan, regardless of what another actuary would say, the Board would abide by GRS. Mr. Strong explained GRS would only run numbers for the City. It was important to get the Board's input on the scope of information to be provided in case the City asked for opinions.

He would indicate the basics that other plans reviewed. These were mainly the retirement date, multiplier, final average earnings calculation and the number of years. Beyond that, there is not much that would significantly impact benefits. If limited to the main component of the Plan, there is a minimum multiplier under the new State Statute of 2.75%. Chair Athol noted the Plan did not have a COLA or medical benefits. Chair Athol thought it made sense to use them and the direction is to respond to their questions specifically, but he thought it would be a bad practice to randomly provide information that was not requested.

Chair Athol suggested moving ~~New~~^{old} Business up on the Agenda because Mr. Strong was present.

VI. Old Business

A. Gabriel, Roeder Smith & Co. - Pete Strong Plan Actuary

1) Extra payments toward unfunded liability and other ideas for cutting costs

Mr. Strong explained the Plan is amortizing its unfunded liability as a level percent of pay. This year, they are paying a lower amount if calculated as a mortgage payment understanding it would go up 4% each year and the payment curve would increase. If there was a level dollar amortization, there would be no curve for the next 30 years or until some of the basis were paid off.

The State says this could be done, but the State prohibits using more than the 10-year historical average of pay increases. The average of the total covered payroll over the last ten years was a 4.4% compound average. He pointed out those aspects change and they tend to have a spike. Mr. Strong explained payroll on October 1, 2005 was \$7.8 million and on October 1, 2014, was \$11.1million. That was still close to 4% on average, but on October 1, 2016, there is a big jump. If payroll stays flat for the next few years, there is about a 2% average increase.

Chair Athol commented there will be payroll increases in the next few years and Mr. Strong advised it will put upward pressure on the cost. It would take a jump to \$14 million or \$15 million to continue to use the 4% payroll growth assumption over next few years. If there is a 0% level dollar amortization, they would see a \$960,000 increase in contributions. Mr. Strong anticipated they would see increases in contributions of about \$500,000 at first for the next few years. When GRS makes their projections they reflect future payroll growth and they would want to see the long-term impact. The City will see future expected increases, but he noted that would create a new base line to measure against. Some plans were proactive and made changes to ward off a large increase down the road. The information should indicate the need to do something. Mr. Strong noted there is a vague exception in Chapter 112, if they realistically expect future payroll increases to be x% and they have been using payroll increases since 1998, the Board can, with State approval, ignore the 10-year history.

Chair Athol commented they had three buyouts in 1999 and he wanted to know how those factored in as there was a decrease in payroll for a while. Mr. Strong responded it was too far back and they were excluded from their 10-year calculations.

Mr. Strong commented the Fire Pension was interested in SB 172, pertaining to the new 175 and 185 money and how it could be used because it throws out the old base amount. They can continue to do things as is without changes if the City and the Board agreed. There is flexibility, but it opens up discussion about how to use the money. Mr. Strong was aware most of the funds were used for the ad hoc benefit for Fire, but the excess money could be rerouted to pay down the unfunded liability. If that were done, the excess would not go to the City's contribution directly, but the extra payments could be directed towards the unfunded liability and the Board choose where to put it. He suggested choosing where one would get the most bang for the buck which was the basis with fewest years left.

Attorney Jensen explained they have to really work with that because it is a negotiated item. It is different than the 13th check. Chair Athol pointed out the 185 monies are tied to the excess and the 1% supplement as far as the City contributing to it. Attorney Jensen explained it has a required distribution for 10% of the principal and all the interest. It was already a designated benefit. She commented they could do something prospectively, but it had to be negotiated. Chair Athol understood everything past \$645,000 could go towards an unfunded liability. Everything under that amount was divided into benefits. Chair Athol thought it was important for the City to know it is a current benefit; not excess State money sitting there. The benefits are divided per member, but future money could be.

Mr. Strong explained if the City and Union do not reach an agreement, the default was anything above the 2013 amount is spent 50/50 between the unfunded liability and benefits. Last year, they received \$645,000. He clarified the new base amount for 2012 is the amount received in 2013. Attorney Jensen explained the amount between 2003 and 2013 has to be used for benefits per Ordinance and she did not believe the entire amount could be allocated. Attorney Jensen explained they codified what they did and the Board could use the \$645,000. Anything over the \$645,000 would be split if there is a default.

Attorney Jensen pointed out the first question is whether the Plan is a supplemental plan. Supplemental plans are plans created post December 2000. That would put them in a different category. It was open to interpretation. The Board asked this question two years ago, but Senate Bill 172 did not pass so it was left as is. Attorney Jensen thought there was a 50/50 chance they are a supplemental plan. Mr. Llopis inquired what if the Plan did not qualify as a supplemental plan and learned they would then have to set up a defined contribution plan. Attorney Jensen explained they could mutually consent out and that was what the League of Cities was pushing. The best and highest use of monies is mutual consent. Attorney Jensen was pushing the State for an interpretation. In 85% of the cases, the Plan would end up allocating the \$645,000 as it was currently used. They meet the supplemental plan criteria. Chair Athol thought all the money

coming in above the 2013 or 2014 amount could be split and the extra money could be allocated towards the unfunded liability.

Mr. Strong explained the concept of an extra payment being made towards the unfunded liability was like an extra mortgage payment made each year to pay down the principal. Mr. Strong explained the biggest impact on the contribution requirement was to pay down the basis with the highest payment relative to the unamortized balance because they would get the highest ratio. If they apply it to a basis with 30 years remaining, it would only reduce the contribution requirement about 5% for every \$100 paid. If applied toward a basis with the fewest years remaining, there would be a ratio of about 10%. Chair Athol inquired where the extra payment would come from and learned it could come from excess Chapter money or via negotiation with the City that they pay extra to be targeted to pay down the principal. It could come from different sources, but it had to be new money above the minimum contribution requirement.

Mr. Llopis inquired what other plans have done. Mr. Strong explained the City of Coral Gables agreed to pay \$2.5 million above the required contributions in October 2015. They were asking it go into a reserve account so it will leave their amortization payments unchanged and not go to a specific base. It is in a reserve account and they will accelerate the payment of their unfunded liability with ongoing, required contributions. It will not reduce the basis until they reach full funding, but it would occur sooner. Attorney Jensen asked if they were making investment restrictions and learned it was going into their general investment pool.

Chair Athol asked if the City budgets for 100 officers and there are 90, if the excess money in the budget for those vacant positions could be used to pay down one of the basis and learned it could. Mr. Strong thought it was worth discussing with the City.

Mr. Strong explained the Palm Beach Gardens Police recently decided to make an extra payment towards the unfunded liability. Mr. Strong was unsure how they will do that, but the finance director asked Mr. Strong how it would work. Attorney Jensen noted it was assumed the Plan would meet the rate of return. Chair Athol commented there are always extra salaries. He also commented they would work on their end to try to find funds, and they were open to any option that would strengthen the pension.

Mr. Strong commented the Board has been phasing in mortality tables and they will be fully phased in on October 1, 2015. House Bill 1309 requires them to use the FRS Special Risk Mortality tables commencing in 2016. He commented the Boynton Firefighters have been hit hard by this. In general, the table the Board was phasing towards was not much different than what FRS was using. The Board uses the RP 2000 Fully Generational Table and was phasing to Scale AA and FRS uses Scale Boynton Beach, but they applied a 90% blue collar adjustment for all males. They use a white collar adjustment for female special risk.

Mr. Strong explained the Plan is very close to the new table and he did not expect the change would have much of a variance. His proposal was they move to the FRS table now. They could implement this a year ahead.

Attorney Jensen thought the advantage of this bill is they have a year to review it. Mr. Strong commented they could review it from both sides, because they were nearly fully phased in, so they would determine the difference with FRS. It may be slightly less.

Mr. Strong would have to do the numbers both ways for the October 1, 2015 valuation. He suggested he be given contingent approval to do so if it had less than a 1% impact or if going to the FRS table reflected on October 1, 2015 was an improvement. Chair Athol thought if over 1%, they could talk about it.

Motion

Mr. Llopis moved to approve a sub 1% approval. Mr. Caudell seconded the motion that unanimously passed.

Mr. Strong inquired if a motion was needed for him to provide requested calculations to the City. Chair Athol did not know what the process was and thought it would be fine for calculation purposes.

Mr. Strong inquired how he should respond to the City if he was asked for his advice. Chair Athol pointed out he did not know how to put a cap on advice or opinions. They will field any thought, process or question, but he did not want Mr. Strong to be put in a position that the City was there for him to tell them what to do.

Mr. Strong explained other plans have put a dollar cap on benefits. If someone was over the cap when instituted, they would be grandfathered and receive a benefit they already earned. One plan put in a \$90,000 annual benefit cap with no future increases attached to it. Attorney Jensen thought a percentage of payroll would be much easier to implement. She had a plan with a dollar cost value of 1% based on a funded ratio of 80%, but they also had a COLA and implementation was messy.

Chair Athol commented they try to front load their Plan because they do not have a COLA or medical benefits. Using a dollar amount would not work. A percentage of the plan, relative to earnings and benefits, may be better. Mr. Strong explained this plan changed so they would not have to move to a defined contribution plan. When they need to increase the \$90,000 cap due to inflation, they will reach other caps and implode.

Mr. Llopis inquired when Mr. Strong works with the City if he would bring back information on what the City requested and learned they could include that in their response letter.

Mr. Strong advised they would not suggest anything other than what was discussed at the meeting. The main items to review were the 3.5% multiplier. Normal retirement dates would not make much of a difference. Employee contribution rates could change and changing retirement dates with a higher multiplier would not be significant. Chair Athol thought showing the projections regarding the impact of having new members would be helpful, but it would have an immediate impact. Mr. Strong explained the first time it would affect the valuation results would be in the October 1, 2016 valuation which calculates the contribution requirement for the 2018 fiscal year.

Mr. Strong reiterated the four areas to study were the multiplier, the normal retirement, final average earnings, which is the top five years out of 10 that has a state minimum, or adjust the member contribution rate. The five going to 10 years final earnings would not result in much of a change. He noted most people work until they are vested, but it was something the City may ask about.

Chair Athol suggested Mr. Strong field whatever specific questions the City has and its impact. If they have a particular question as opposed to here is my opinion of what will work the best, he should calculate the impacts of their questions. Attorney Jensen noted they could limit the scope to requests that come from the parties, so there would be some level of consent.

Motion

Mr. Caudell moved to approve Mr. Strong to run cost calculations or cost impacts of the changes presented by the bargaining parties contingent on the Board receiving copies of the work. Mr. DeGuilio seconded the motion that unanimously passed.

Mr. Strong will create an impact statement regarding new entrants with a 3% multiplier and calculate projections what the impact would be in the future. He noted that projection will become a new baseline.

Attorney Jensen will draft a response to the City's letter that the Board approved GRS to calculate cost impacts of scenarios requested by the collective bargaining parties and the Board wants copies.

The Board took a short break at 11:27 a.m. and reconvened at 11:31 a.m.

VI. OLD BUSINESS:

- A) Pension Disability Application – Gregory Kenny-**
 - 1) Current Estimated Disability Benefit

Attorney Jensen distributed the disability application from Gregory Kenny, the application for Social Security Disability, which is required, and an application for Workers' Compensation. Tim McPherson from Human Resources was present.

Attorney Jensen had provided a copy of the process to be followed and explained the requirement is to review the application as presented. The applicant provided relevant documentation, a signed release and information from doctors. He could apply for Workers' Compensation and Social Security. The records were reviewed by the Board's independent medical examiner. For this case, they sent records to an orthopedic doctor for an exam, but he was not able to make a final determination. They sent the records to a neurological physician who could not make a conclusion, but the orthopedic doctor had recommended a Functional Capacity Exam (FCE). That information was provided. The Trustees needed to review the medical documents. The doctors' reports they completed following the process would indicate if Mr. Kenny was totally disabled from performing the duties of a police officer. Attorney Jensen noted other items to consider were:

- Are there other positions available he could perform either with or without a reason accommodation;
- If his disability was permanent, is the disability caused by employment; and
- Did the disability arise from any excluded items?

The Board could make a decision from that point. She reminded the Board the burden of proof was on the applicant, and the decision of the Trustees must be based on a preponderance of the evidence. Attorney Jensen stated for the record the Trustees were provided, through a secure exchange server, all of the documentation.

Attorney Jensen reviewed Mr. Kenny was in a car accident on October 22, 2011, while on duty. He returned to work and went to MedExpress. The doctor documented Mr. Kenny hit a wall at a speed of about 30 miles per hour. The airbag did not deploy.

Attorney Jensen reviewed the various doctor reports, the extent of Mr. Kenny's injuries, and the treatments he received. He was seen by various doctors including an orthopedic physician and a neurologist. There were two Independent Medical Examinations and he underwent MRIs and a FCE. It was concluded Mr. Kenny would be unable to return to duty based on his job description.

An email was sent to the Police Chief asking if he had a position available for Mr. Kenny and Attorney Jensen had not received a response.

Chair Athol inquired if there were any other suits that contradicted any of the information the Board was provided and learned there were none. It was acknowledged there were some pre-existing conditions, but the disabling injury was job related. Both Mr. Kenny's personal injury and Worker's Comp attorney agreed he cannot return to work in law enforcement. Attorney Jensen advised the Trustees can make a decision at the meeting or request additional information. The personal injury case was for the October 2011 car accident. A personal Injury suit was not filed for the 2014 accident. Attorney Jensen commented it was clear to the doctors the pre-existing conditions were aggravated by the second accident, but they were not considered to have been a part of the disabling injury.

Mr. Caudell inquired if surgery was recommended or would be in the future and learned it was not.

Mr. Kenny's counsel, Attorney Kelly advised Mr. Kenny had been working for the City for 12.5 years and had two motor vehicle accidents. This second accident brought out injuries from a 2011 accident. He was previously treated for migraine headaches, but the accident increased the intensity of them and he had low back pain on his right side which was responsive to treatment. He was released and returned to full duty. A pain management specialist advised there was nothing surgically that could be done and surgery was not recommended. A neurologist was treating him for migraines and he was doing better. His main complaint was his back, but he was released for full duty, and then had his second car accident. He was told he would not be able to return to work. While he was moderately cleared he cannot sit for prolonged periods of time or perform any lifting or be involved in any altercations. Mr. Kenny did all he was asked to do. He did not choose his doctors and Attorney Kelly commented this group selected quality doctors. On October 21, 2013, he was at Maximum Medical Improvement (MMI) and had a 4% impairment rating. He has issues with walking and both doctors indicated he was totally disabled for law enforcement. He had a permanent injury. The records indicated it was work related and no exclusionary provisions exist. Attorney Kelly advised Mr. Kenny should meet the disability provisions.

Attorney Jensen commented if there was something additional the Trustees wanted to know, they should obtain additional information and then make a decision because once a decision was made the burden shifts. Chair Athol asked if there was a simple synopsis to coincide with the approval. Attorney Kelly explained the 2011 civil suit was closed. Mr. Kenny settled the case as opposed to going to trial. Attorney Kelly pointed out if a suit was settled, the person signs a general release. Mr. Kenney explained all the information given to the Board was from the civil suit. Chair Athol was only concerned the complaints were consistent. Attorney Jensen did not have a copy of the complaint and noted the complaint may not have been filed. Some people settle before that occurs.

Attorney Jensen reviewed the interrogatories from Attorney Bill Bone, Mr. Kenny's prior personal injury attorney.

Chair Athol thought it was incumbent on the Trustees to ascertain if the civil suit was consistent with the application and learned it was. Attorney Kelly advised often if Workers' Compensation was controlling the doctors and the personal injury attorney does not think their client is receiving a realistic evaluation, they send them to their own doctors. In this case they did not do so. Chair Athol thought all was consistent and it was fine. Attorney Jensen did not find any other doctors named in the medical records.

Attorney Jensen inquired if Workers' Compensation was still paying for the medical treatment. Mr. McPherson explained a doctor on June 26, 2015, indicated Mr. Kenny still had restrictions of no lifting over 20 pounds and no working past six hours. They had filed a written request for surgical intervention requesting surgery on certain discs.

Mr. Kenny explained they were doing an epidural and he had remained status quo since reaching MMI. Attorney Jensen asked if there were any Workers' Compensation issues as a result of the October 2014 accident. Mr. McPherson was aware of a personal injury but it was hard to pin which accident caused which condition. Attorney Jensen also announced she received a response from the Chief advising that regrettably there were no positions to accommodate Mr. Kenny in the Police Department.

Motion

Mr. Caudell moved to approve the application. Mr. DeGuilio seconded the motion that unanimously passed.

Attorney Jensen explained the disability approval was effective today or the date of the last payment from the City. Attorney Jensen read from the Ordinance and explained how payment would be handled.

- 2) Social Security Disability Online Application
- 3) "The Disability Decision" by Attorney Jensen
- 4) Disability Ordinance
- 5) Kenny Disability Notebook – includes medical records, IME & FCE reports, etc. – Access Secure Server – Email 7-13-2015

B) Nomination of 5th Trustee -

Chair Athol explained Trustee John Huntington resigned. He commented there was not a lot of interest, except for Russell Faine who had been interested in the Board for a while. Chair Athol supported him. It was noted Messrs. Llopis and Caudell had tried to spread the word of the vacancy.

Motion

Mr. Llopis moved to make Russell Faine a Fifth Trustee. Mr. Caudell seconded he motion that unanimously passed.

Chair Athol advised there are two schools and conferences for Trustees. The Trustee school will take place in October and the State puts on two conferences each year, usually in Orlando and Tallahassee.

There was agreement to send a letter to the City Commission to appoint Russell Faine as the Fifth Trustee as a ministerial duty. Mr. Faine was advised to complete Form 1 within 30 days and file it with the Supervisor of Elections. Ms. Ladue would assist.

VII. NEW BUSINESS:

- A. Gabriel, Roeder Smith & CO -Pete Strong – Plan Actuary
 - 1) "Extra payments toward Unfunded Liability" and other ideas

for cutting costs.

VIII. PENSION ADMINISTRATOR'S REPORT – N/A

IX PUBLIC COMMENTS:

None.

X. ADJOURNMENT:

There being no further business to discuss, Chair Athol properly adjourned the meeting at 12: 18 p.m.


Catherine Cherry
Minutes Specialist
100215