



**JACKSONVILLE POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
SPECIAL MEETING SUMMARY – MARCH 26, 2019 – 9:00AM**

PRESENT

James Holderfield, Chair
Lt. Michael Shell, Vice Chair
Thomas Lumpkin
Michael Pelletier
Asst. Chief Richard Reichard
Lt. Christopher Stover

EXCUSED

Eng. Jean Paravisini

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Chuck Hayes, Pension Benefits Manager
Sonya Hoener, Office of General Counsel
John Sawyer, Office of General Counsel

GUESTS

Tom Alloush, Firefighter Engineer
Mitchell Eaves, Firefighter
Jeremy Garriott, Police Sergeant
Christopher Harper, Fire Captain
Alex Hinton, Police Officer
William Ironside, Fire Captain
Steven Riska, Fire Battalion Chief
Cole Barnett, Donnelly & Gross
Paul Donnelly, Donnelly & Gross
Cheryl Franzino, Court Reporter
Randy Wyse, JFRD, President, IAFF Local 122
Phil Vogelsang, FOP 5-30
Steve Zona, President, FOP 5-30

Meeting Convened

9:02AM

Meeting Adjourned

10:44AM

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I. CALL TO ORDER

Advisory Committee Chair James Holderfield called the meeting to order at 9:02AM. He noted that any recommendation made by the Advisory Committee today will not be binding or final – the Board of Trustees makes all final decisions.

II. MEMBERS' APPEALS HEARINGS

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Timothy Johnson gave a brief presentation of the Beaches Time Service Connections issue which affects the appellants who have requested a hearing today. He read the following from a prepared handout (HANDOUT: "Administrator's Presentation of Error and Corrective Action"):

"In June 2016, the PFPF received a legal opinion regarding the eligibility of firefighters employed by the federal government to purchase time service.

In a follow-up meeting later that month to discuss the opinion which occurred at the PFPF office consisting of Stephen Durden, Beth McCague, Devin Carter, and Chuck Hayes, PFPF staff concluded that connecting Beaches time service should be treated the same as connecting City of Jacksonville time service.

PFPF staff began a practice of charging members their current contribution rate for time service connections.

This practice went on until it came to my desk in February 2018 when staff began receiving requests to lower earlier time service rates from members who had previously been charged 20%. I went to the PFPF attorney Lawsikia Hodges and received guidance that "...the law, Section 121.107 on Time Service Connections, is black and white; members may connect time at either a 10% (or current contribution rate) or a 20% rate, depending on where they worked...any incorrect payments would be corrected just like in any other case."

Over an approximate 16 month period 11 members charge rates less than 20%. Since this time, one member has passed away and his estate has been refunded, one member chose to pay the difference between the rates, one member chose to take a reduced amount of time service credit, and another member is retired and not an appellant today.

In March 2018 I sent letters to the remaining affected members, informing them that errors may have occurred regarding their TSCs. Then in October 3, 2018 I sent follow-up letters to affected members formally requesting members choose one of three options to correct their TSC, or to appeal to the Board of Trustees. Seven members have appealed. The difference between the rates charged to these seven appellants and the 20% rate totals \$173,777.34."

James Holderfield asked if anyone had questions for Timothy Johnson. There were no questions.

Paul Donnelly introduced himself and Cole Barnett as attorneys representing six appellants (they are not representing Mr. Harper). They represent Mr. Alloush, Mr. Eaves, Mr. Garriott, Mr. Hinton, Mr. Ironside, and Mr. Riska. All appellants are present today.

Paul Donnelly began his presentation (HANDOUT: "Donnelly Presentation") and covered the following points (please refer to the handout or meeting recording for additional detail):

- Purchase agreements were correct
- Breach of contract (unilateral mistake not a defense)
- Unconstitutional taking
- Unconstitutional impairment of contract
- Estoppel
- Detrimental reliance

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- Waiver
- Fiduciary duty – attorney's fees, costs, expenses of legal proceedings

Paul Donnelly discussed the members at issue: Tom Alloush, Mitchell Eaves, William Ironside, Steve Riska, Alex Hinton, and Jeremy Garriott.

Paul Donnelly discussed the following topics and made the following points:

- The 8% purchase price is correct
- The Board (and the Committee) must interpret the ordinance
- Section 121.107(d)'s final sentence is ambiguous
- 121.107(d)'s ambiguity: "on such terms as the Board shall determine"
- The purchase agreements = enforceable contracts
- The Fund Administrator has repeatedly upheld the 8%
- This Committee has repeatedly upheld the 8%
- The Board has repeatedly upheld the 8%
- The members relied to their detriment on the Fund's prior interpretation of the ordinance
- It's the same as taxpayers
- Breaching the purchase agreements violates the law

Paul Donnelly concluded that breaching the purchase agreements violates the law, and that the most important aspect to consider is the Board of Trustees' fiduciary duty. The litigation costs in six of these cases would easily exceed \$150,000, and would likely exceed \$200,000.

Richard Reichard asked to confirm that Steven Riska paid for his TSC with a personal loan.

Paul Donnelly agreed, and said that is detailed in Steven Riska's sworn statement.

Richard Reichard said that he assumes Steven Riska was planning his retirement, and his DROP date around the purchase of this TSC. He came to the pension office, took out a loan, and paid for the TSC at the 8% rate.

Paul Donnelly agreed, and said this is stated in Steven Riska's statement. Ironside is another example – he is already in the DROP. He has made his life decisions on this.

Michael Pelletier asked if the pension office upheld these corrections.

Paul Donnelly said yes, and directed attention to item 1-d on tab 1-d of the binder. Timothy Johnson signs each application for each member.

Michael Pelletier asked if there is documentation showing that Tom Alloush bought his TSC at 20%, then it was later changed to 8%.

Paul Donnelly said yes, it is on tab 1-b and tab 1-d.

Michael Pelletier asked how we got from 20% to 8%.

Paul Donnelly said it is because the TSC was corrected.

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Cole Barnett said Tom Alloush came to the pension office, and the pension office offered his a corrected TSC.

James Holderfield asked how we were able to change Tom Alloush's TSC if it was an 'irrevocable election' under the IRS code.

Paul Donnelly said the 'irrevocable election' means Tom Alloush has no ability to change or make another election. He has relied on that to pay his TSC on a monthly basis.

James Holderfield asked if Tom Alloush was credited the extra percentage when the TSC was recalculated.

Cole Barnett said now Tom Alloush has to pay only 97 pay periods.

Michael Shell said assuming the 8% was 'correct', if Tom Alloush started at 20%, is Paul Donnelly asserting he is locked in to that contract?

Paul Donnelly said he does not know, he hasn't thought that through. There is an agreement, offering x amount of days for x price. That is a contract. The Board of Trustees approved the recalculation. He said he would rather not speculate.

Thomas Lumpkin asked if there was a hyperbole in Paul Donnelly's vernacular. He said to him, irrevocable means 'no'.

Paul Donnelly said 'irrevocable' relates to your financial planning. You cannot say you can pay more or less, or change the schedule. There is a decision to do a monthly payment, and you cannot change the payment plan. You cannot pay off the whole loan at once. That is not allowed.

Cole Barnett said he would begin to present each member's sworn declaration.

Sonya Hoener said that it is fine to read the declarations, but the Advisory Committee is only considering the documents submitted in members' appeals today.

Timothy Johnson said just to be clear, he does not approve the TSCs. He said he just affirms that the application was submitted to the Board of Trustees on the date shown on the TSC.

Cole Barnett read from each member's declaration as contained in the 'Donnelly Binder' handout:

- Tom Alloush (tab 1)*
- Mitchell Eaves (tab 2)*
- Jeremy Garriott (tab 3)*
- Alex Hinton (tab 4)*
- William Ironside (tab 5)*
- Steven Riska (tab 6)*

After Cole Barnett finished reading the members' declarations, Paul Donnelly said their presentation is concluded. There were no more questions.

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James Holderfield said OGC now has the opportunity to make a rebuttal.

Sonya Hoener made OGC's rebuttal by covering the following topics and making the following points:

- *The Advisory Committee and the Board of Trustees are bound by the law, section 121.107 in this case.*
- *The law is black and white: section (d) states these appellants are not a part of the City of Jacksonville, and are not covered in section (a).*
- *Paul Donnelly tried to say the last sentence is ambiguous, but it is plain as day.*
- *The employee shall pay a sum equal to 20%. It does not say 8%.*
- *'On such terms as the board shall determine' does not include changing the rate.*
- *There was a mistake in law. 8% violates the law, which governs this Committee, the Board, and the Fund.*
- *Paul Donnelly repeatedly referred to this being a contract. No valid contract was created. You cannot create a contract which violates the law.*

Sonya Hoener then discussed the transcript on tab 13 of the 'Donnelly Binder' which was presented by Paul Donnelly and made the following points:

- *There is no mention of 8% in the transcript.*
- *This discussion was about the Cecil Field firefighters.*
- *Mr. Scheu's statement does not mention a contract. This does not create a contract.*
- *Durden's comments do not create a contract.*
- *Nothing in that transcript, or in the ordinance, refers to purchase price.*

Sonya Hoener continued to make the following points:

- *The Board has the flexibility to decide how many pay periods, or the pay method by which members will pay for their TSC, not the rate.*
- *No judge would construe this language in the transcript, or any Board action as creating a contract to give an 8% rate. Everything refers to Cecil Field firefighters.*
- *You cannot rely on statements made on a completely different subject by a completely different party.*
- *Charging 8% is a mistake to a clear law.*
- *Government entities cannot be bound by a mistake to law. Government entities cannot be estopped to a mistake in law.*
- *The law is 20%, there is no flexibility.*

Sonya Hoener made the following points on items in members' appeals which were not covered in Paul Donnelly's presentation:

- *Unconstitutional taking: the law is clear, it does not provide 'property' in the 8%.*
- *The claim that the corrections policy is 'ex post facto': the City Charter 22.04(j) also gives the Board discretion to make corrections to mistakes – this was last changed in 2009, which predates the appeals.*
- *Corrections are not illegal – the Board does not have the authority to uphold the 8%, that would be the illegal action.*
- *Even though Paul Donnelly repeated the word 'contract', there is no contract here.*

Richard Reichard said he was confused that there was no 'contract'.

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Sonya Hoener said there was no contract, there is no traditional bargaining process. The process to purchase time is set out in the ordinance.

Richard Reichard said the member is told the rate from the Fund. The only negotiation is time.

Sonya Hoener said they cannot use a different rate. There is no option. 8% is not a valid offer.

Richard Reichard asked if legal was involved at every stop of this process.

Sonya Hoener said she is not sure who signed off. Legal representation was present at the meetings. She said she can't imagine legal would say 8% is the right rate. Even if they gave bad legal advice, 8% is still not legal.

Richard Reichard said he can't imagine the Board of Trustees going outside the law. The Board has a fiduciary duty to the fund, and also has to treat members fairly, and correctly. He said he does not think it is right to go backwards and say we made a mistake and now the members have to deal with it at the end of their careers.

Sonya Hoener said she agreed that these were unfortunate circumstances. The mistake made was one of law. And the person suffering could look at the ordinance and see that it says 20%.

Richard Reichard said he does not think that is the member's responsibility.

Sonya Hoener said the ordinance is there in plain language. Even if there is detrimental reliance, it cannot be used against the Board. It is an unfortunate mistake, but the Board is not bound by it. The Board's options for remedy are limited by the law.

James Holderfield referenced Steve Durden's June 17, 2016 memo which refers in the last sentences to governments in Duval County, i.e. Beaches and Baldwin.

Sonya Hoener said that when Steve Durden refers to 'Beaches within Duval County', he is making the distinction between federal, Cecil Field, and other governments in Duval County. The ambiguity was whether that ordinance applied to Cecil Field firefighters. It is clear that the affected members here today fall under subsection (d).

Thomas Lumpkin mentioned the fact that judges have options to provide varying sentences other than what ordinances provide.

Sonya Hoener said yes, judges have that discretion, but the ordinance does not give the Board of Trustees discretion to any rate other than 20%.

James Holderfield asked if there is anything in the ordinance that requires the Board of Trustees to recollect money.

Sonya Hoener said she would have to refer to the City Charter which provides general powers to the Board.

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James Holderfield said in his professional realm, when actions violate law but are entered into under good faith, many good men have remained with their families – they have to make tough decisions in a split second. He said he believes this was made in good faith.

Michael Shell asked what Sonya Hoener's cost projection of litigating this matter would be.

Sonya Hoener said she would defer to Paul Donnelly's projection.

Michael Shell asked who would pay the legal fees, one party, or both parties.

John Sawyer said each side would pay their own legal fees.

Michael Shell asked if the Advisory Committee recommends to the Board of Trustees that these TSCs were entered into under good faith, would that open the door to future applications at the 8% rate.

Sonya Hoener said the ordinance is clear – 20%. The Board is bound by 20% until City Council changes the ordinance otherwise.

III. PUBLIC SPEAKING PERIOD

None.

IV. ADVISORY COMMITTEE RECOMMENDATION

Motion to uphold the affected members' appeals: REICHARD; Second: LUMPKIN; APPROVED UNANIMOUSLY.

James Holderfield said the Advisory Committee's obligation today is based upon the appeals of the affected members. The Corrections Policy charges the Advisory Committee to uphold the appeal, or to deny the appeal and make a recommendation to the Board of Trustees.

Richard Reichard said his suggestion is that the Advisory Committee upholds the appeal. The members did not do anything wrong. He said he sees no other option for another decision.

James Holderfield asked if Richard Reichard was making the motion to accept the appeals as written.

Richard Reichard said yes.

Richard Reichard made a motion to accept the members' appeals as written. Seconded by Thomas Lumpkin.

James Holderfield said, "We have a motion and a second, to accept the appeals as written, and provide a recommendation to the Board."

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The vote passed unanimously.

James Holderfield said we will reduce our recommendation to writing, and will submit it at April's Advisory Committee meeting for the record. He asked Timothy Johnson to provide the recommendation to him, and he would take it to the Board, and take action at the next Advisory Committee meeting.

V. ADJOURNMENT

James Holderfield adjourned the meeting at 10:44AM.

Steve Lundy, Assistant Plan Administrator
Posted 03/28/2019

James Holderfield, Chair
To be approved at the Advisory Committee Meeting on April 10, 2019.

The next regular meeting will be held Wednesday, April 10, 2019 at 9:00AM.