



JACKSONVILLE POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019 – 9:00AM

PRESENT

James Holderfield, Chair
Lt. Michael Shell, Vice Chair
Thomas Lumpkin
Eng. Jean Paravisini
Michael Pelletier
Lt. Christopher Stover

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Chuck Hayes, Pension Benefits Manager
Lawsikia Hodges, Office of General Counsel
Bob Sugarman, Fund Counsel – via Webex

EXCUSED

Asst. Chief Richard Reichard

Meeting Convened

9:08AM

Meeting Adjourned

10:29AM

NOTICE: Pursuant to the American with Disabilities Act, accommodations for persons with disabilities are available upon request. Please allow 1-2 business days notification to process; last minute requests will be accepted, but may not be possible to fulfill. Please contact Disabled Services Division at: V(904) 630-4940, TTY-(904) 630-4933, or email your request to KLMcDan@coj.net. If any person decides to appeal any decision made with respect to any matter considered at this public meeting such person will need a record of proceedings, and for such purpose such person may need to ensure that a verbatim record of the proceedings is made at their own expense and that such record includes the testimony and evidence on which the appeal is based. The public meeting may be continued to a date, time, and place to be specified on the record at the meeting. Additional items may be added / changed prior to meeting.

I. MOMENT OF SILENCE

Ollie S. Smith, Retired Firefighter

II. PUBLIC SPEAKING PERIOD

None.

III. CONSENT AGENDA (ITEMS 1-6)

The benefits listed below have been reviewed and approved by the Pension Benefits Manager.

The Advisory Committee discussed Item 3.1., Matthew H. Butler's Application for Vested Retirement. Due to his pending case, the Advisory Committee decided to defer approval of his application for one year.

Michael Shell made a motion to approve Consent Agenda Items 1-6, with the exception of Matthew H. Butler's Application for Vested Retirement, and to revisit his application in April 2020. Seconded by Christopher Stover. The vote passed unanimously.

POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019
Page 2

1. **MEETING SUMMARIES TO BE APPROVED**

1. **Summary of the Meeting held March 13, 2019.**
Copy held in the meeting file.
2. **Summary of the Special Meeting held March 26, 2019.**
Copy held in the meeting file.

2. **APPLICATION FOR SURVIVOR BENEFITS – HANDOUT**

1. **MUNRO, Nancy B.** *Widow of Leroy E. Munro. (d. 02/23/2019)*
Monthly gross pension \$5,500.61

3. **APPLICATION FOR VESTED RETIREMENT**

1. ~~**BUTLER, Matthew H.** Police Officer
Monthly gross pension \$1,327.82
Vesting Date 03/26/2019 Benefit Commencement Date 01/04/2030~~
2. **McDONALD, Thomas J.** Police Officer
Monthly gross pension \$3,267.69
Vesting Date 03/06/2019 Benefit Commencement Date 11/01/2019

4. **APPLICATION FOR TIME SERVICE CONNECTIONS**

1. **BARTLETT, Brent** Police Officer
Florida Service (4 years) \$38,429.28
2. **BUTLER, Nicholas E.** Police Sergeant
COJ Service (1 year, 5 mos., 29 days) \$12,086.25
NOTE: Time Service Credit for Prior Bailiff Service
3. **RAZZOOG, Bryan T.** Firefighter
Florida Service (3 years, 10 mos.) \$49,770.16
4. **STERNER, Joshua B.** Police Officer
COJ Service (4 years, 6 mos.) \$24,398.71
5. **TEMPLES Jr., Timothy S.** Firefighter
Florida Service (1 year, 6 mos.) \$14,911.27

5. CORRECTION OF PENSION BASE

- | | |
|---|------------------------------|
| 1. MATSICK, David S. Bi-Weekly Pension Base | Police Officer \$1,524.89 |
|---|------------------------------|

6. SHARE PLAN DISTRIBUTIONS

To be received as information

- | | |
|---|------------------------------|
| 1. GRAY, Dwayne M. Share Plan Distribution | Police Officer \$3,167.76 |
| 2. ROUNSVILLE, Michael S. Share Plan Distribution | Police Officer \$3,017.69 |
| 3. SCHLESIER, Roger B. Share Plan Distribution | Police Officer \$1,500.65 |

IV. OLD BUSINESS

Timothy Johnson

1. JFRD Out-Of-Class Pay Update

Timothy Johnson updated the Advisory Committee on the JFRD Out-Of-Class Pay issue. A meeting is scheduled at 11AM with the City to discuss this. Steve Lundy, Chuck Hayes, and Kevin Grant have been assigned to this issue. There has been communications between the City and the union to discuss how contributions will be collected from members.

Steve Lundy updated the Advisory Committee on the PFPF staff's last meeting with the City on this issue. The City has drafted letters which will be sent to affected members. The City is also discussing with the union how to collect the missing contributions.

Chuck Hayes noted that this issue is a problem on the City side. It was their mistake in payroll. Now, after further review, they have also found additional issues on the JSO side.

2. Share Plan Distribution Update

Timothy Johnson said that Steve Lundy has done analysis on the Share Plan issue, and has received great advice from the attorneys and input from the union presidents. Right now, we are starting to apply the Share correction.

Steve Lundy updated the Advisory Committee on the status of the Share Plan correction. Steve Lundy and Chuck Hayes met with ITD on Friday to discuss how to make the corrections. Corrections to members' accounts are now underway. Once all accounts have been corrected, the total amount will be totaled and redistributed among everyone remaining in the Share Plan, and retirees who have exited the Share Plan.

3. **Beaches Time Service Connections Recommendation**

NOTE: Discuss Christopher Harper Appeal

James Holderfield directed the Advisory Committee to the draft letter he wrote to the Board of Trustees regarding the Beaches Time Service Connections Recommendation from the March 26, 2019 Special Advisory Committee Meeting. He also noted that Paul Donnelly only represented 6 of the 7 appellants – he did not represent Christopher Harper.

Thomas Lumpkin made a motion to accept Christopher Harper's appeal as written. Seconded by Michael Pelletier. The vote passed unanimously.

Michael Shell said he appreciated James Holderfield's effort on the letter. One of the biggest overriding factors in consideration was that litigating this issue would cost much more than the money we would receive from the members.

Michael Pelletier agreed.

Jean Paravisini asked if the word 'error' had to be used.

James Holderfield said he believed an error occurred. It is undeniable.

Lawsikia Hodges said the whole charge of the Committee is to determine if an error occurred. The code is clear.

Chuck Hayes said the Summary Plan is posted on the website for members to read. This includes the rate at which members may purchase time.

Lawsikia Hodges said members should have some obligation to know what they are paying. Once you determine an error occurred, IRS rules state you must attempt to correct the error. The Board has to make an attempt to get the money back.

Lawsikia Hodges added that this is an insignificant error – this is not millions of dollars.

James Holderfield said it is less than pennies – about eight-hundredths of a percent of the total fund value.

Lawsikia Hodges continued and made the following points:

- Questions such as whether or not a contract exists, or whether there was detrimental reliance would be played out in a courtroom setting. We did not contemplate the Advisory Committee doing this.

POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019
Page 5

- *Members and their attorney were not under oath at the hearing.*
- *Just because members brought an attorney does not mean that they will litigate.*
- *You cannot prove estoppel in government.*

Lawsikia Hodges said she and Bob Sugarman want to make sure that the Advisory Committee's recommendation to the Board of Trustees is strong, and has enough evidence in the record to withstand any challenge.

Bob Sugarman said our recommendation is to go through the record of the members' appeals hearing and see everything that we have in order to find sufficient support of the conclusions the Advisory Committee reached. The IRS requirements, the Advisory Committee procedures, and fiduciary duty must line up.

Bob Sugarman said we will produce a proposed recommendation to the Advisory Committee along the same lines as what James Holderfield has written, with footnotes. If we find insufficient notes in the record, we would suggest the Advisory Committee reopen the hearing to provide members additional opportunity to show detriment. We need to make sure we have explored all the areas James Holderfield opened up in his letter to satisfy all IRS procedures.

Bob Sugarman discussed Fiduciary Liability insurance with the Advisory Committee, which may cover the \$173,000. We will talk with the Board of Trustees about making a claim on this policy.

Bob Sugarman said there are questions of fact and law. Each member's case is different. Donnelly argues that there is a contract. OGC argues this is a mistake of law. There is no estoppel on mistakes of law. We didn't get into the question of if there was a mistake of fact. We will be searching for more information on detrimental reliance, and mistakes of fact. James Holderfield hit the high points, now we need support behind it. There is more work to do.

Timothy Johnson asked if the letter we sent to members giving them options to resolve their TSCs counted as an attempt to collect money, especially since two members chose to resolve the issue. One chose to pay the difference. The other chose to take credit at the correct rate.

Lawsikia Hodges said that when the Board of Trustees has the obligation to attempt to collect, we have to ask that question. She said she wants to make sure we take each issue as presented.

Timothy Johnson said we asked the members to fix this – to pay the difference – before the appeals process began.

James Holderfield said he believes we have made the attempt to collect the money.

Lawsikia Hodges said that if there is a good enough reason, you can say you won't collect any money back. But the Plan needs to be made whole. If the insurance company doesn't pay, the Board will ultimately have to figure out how to make the plan whole.

Lawsikia Hodges said she is trying to look at this comprehensively considering the IRS obligations. The Committee's recommendation needs to keep all of this in mind. The Board of Trustees is on the hook for the balance. The members may need to come back to provide more evidence.

POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019
Page 6

James Holderfield said part of the issue is that some members may be able to pay back more than others.

Lawsikia Hodges said all the appeals should be considered different on all cases. There should be a repayment plan, and if the Trustees agree, we envisioned members would work with Timothy Johnson on a repayment plan. This repayment plan could also take into account the members can't pay all of the money back.

Michael Shell said it is unfortunate that this discussion of the process is happening after the hearing has taken place. The Advisory Committee is being asked to make decision on matters of law, on matters the Advisory Committee is not qualified. It makes sense for future cases like these to go before arbitrators. This is beyond our scope to make rational decisions.

Michael Shell asked if the Advisory Committee 'has any teeth' regarding repayments, assuming members assert that they don't have to pay anything extra.

James Holderfield said the members already asserted that they don't owe any more money.

Lawsikia Hodges said that doesn't address whether they can pay any back. She said she and Bob Sugarman already articulated that the Advisory Committee's only scope is to determine if an error was made –

James Holderfield added – and to provide a recommendation to the Board of Trustees. He said he cannot find anywhere in the ordinance that says the Board of Trustees has to go after members for money. There are two avenues for argument – an error in interpretation of the municipal ordinance, and what we are obligated to do by the IRS. Bob Sugarman says there is a potential out for the IRS portion when the costs have a negative impact to the Fund. When we say 'the Fund', the Fund is not some mystical entity. It is an amalgam of every police officer and firefighter that receives benefit, and currently paying into the plan. 'I like my dollars – my 10% that comes out of my paycheck every two weeks to go to good use. I would like them to be appropriately invested. I would like the minds of the men and women that we hire to administer this Fund to be put towards better use than arguing over how we are going to collect eight-hundredths of a percent.'

Thomas Lumpkin said there has to be case law on similar cases.

Lawsikia Hodges said that is what we are saying. The question is, is there enough reason to wipe the slate clean on this \$173,000? We will go back and look at the record to see if there is a good enough legal reason based on the arguments in the appeals. This is precedent – setting as well.

James Holderfield said he also is recommending that the Board modify future TSC applications to include additional information – the percentage rate, the dollar amounts, what agency the member worked for, and what branch of the military they served.

Bob Sugarman said the issue is 'can they pay?'. The IRS wants you to go through this exercise. He said he doesn't think we will get an 'inability to pay' argument if the member is still working. The question is, 'should I pay?'. Then there should be a contract, and detrimental reliance. This can be cut short by a

POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019
Page 7

parallel investigation if the member can settle – to resolve in an equitable manner. Both sides have good arguments – let's split the difference.

Timothy Johnson said he is asking if whether Lawsikia Hodges' recommendation was to make another attempt to collect, or whether this attempt should occur while Bob Sugarman and Lawsikia Hodges are looking for more evidence.

Bob Sugarman said there is no harm in looking into if members are willing to make a deal with us.

James Holderfield said his fear is that everyone will have different deals – one pays less, and the rumors start.

Bob Sugarman said Timothy Johnson's charge should be to offer the same percentage rate to everyone.

The Advisory Committee continued to discuss whether Timothy Johnson should ask members if they can pay more money.

Lawsikia Hodges said if you go against the legal advice, the Board of Trustees will be 'on the hook' – on their own. If we feel there is not enough evidence to support the Advisory Committee's recommendation, then we must go back to the rule – you must attempt to collect.

James Holderfield said he thinks the corrections policy lays out zeroing everyone out. He said he is not in favor of having Timothy Johnson making another offer to members for X number of dollars.

Thomas Lumpkin said he would second that opinion.

Michael Pelletier said our original three options given to members was our attempt to make the fund whole.

Lawsikia Hodges asked if we are staying on one track.

James Holderfield said we will stick to the track of one recommendation, and look forward to getting more information.

James Holderfield made a motion to amend the Time Service Connection applications to include the percentage rate used to calculate the benefit cost, the ordinance reference derived, jurisdiction, and anything else the Board of Trustees would like to submit. Seconded by Michael Shell. The vote passed unanimously.

V. COUNSEL REPORTS

Lawsikia Hodges & Bob Sugarman

1. Reemployed Pensioners Update

POLICE AND FIRE PENSION FUND
ADVISORY COMMITTEE
MEETING SUMMARY – APRIL 10, 2019
Page 8

Lawsikia Hodges said interviews have been conducted, and summaries written. A final opinion and investigation summary should be ready for Timothy Johnson by the end of this week.

VI. NEW BUSINESS

Thomas Lumpkin informed the committee that he will be out of the country next month and will be unable to attend the Advisory Committee meeting.

VII. ADJOURNMENT

10:29AM

Steve Lundy, Assistant Plan Administrator
Posted 04/12/2019

James Holderfield, Chair

To be approved at the Advisory Committee Meeting on May 8, 2019.

The next regular meeting will be held Wednesday, May 8, 2019 at 9:00AM.