

MINUTES
SPECIAL MEETING
OF THE
FT. MYERS BEACH BOARD OF FIRE COMMISSIONERS
TIME: 3:00 PM
DATE: October 15, 2009
PLACE: 3043 Estero Blvd., Station 31 Meeting Room
Fort Myers Beach, FL 33931

IN ATTENDANCE: Chairman John Scanlon, Vice-Chairman Ted Reckwerdt, Sec./Treasurer Betty Goodacre, Commissioner Joe Schmid, Commissioner Carol Morris, Attorney Richard Pringle, Attorney John Hament, Chief Mike Becker, Assistant Chief Larry Evans, District members and members of the public.

Meeting called to order by Chairman Scanlon at 3:00 PM

Pledge of Allegiance

Moment of silence for our troops

Public Input on Agenda Items

DVP Troy Mesick – District 3 stated he is unsure of items B and C on the agenda regarding healthcare.

Beach resident Flip Harby stated that article 17 of the Chief's contract and putting the Chief on leave could cost the District and taxpayers money that is not budgeted for. Mr. Harby also stated that the District should look at the insurance if it is going to save over \$320,000.

Other Business

- A. Fiscal Impact of Ratification of Union Articles 24, 25, 26, 28 and 29** – Chief Becker stated Management and the Union have tentatively agreed to the noted articles. The Board will need to ratify the articles and retro them back to October 6, 2009.

Chairman Scanlon motioned to ratify the articles listed above and retro back to October 6, 2009. Commissioner Schmid seconded.

Vice-Chairman Reckwerdt asked if Management and the Union were finished or if there were other articles they were looking at.

Chief Becker stated they are continuing to negotiate and talk.

Commissioner Schmid asked what the impacts of the articles were to the budget.

Chief Becker stated the wages alone was over \$230,000 and combined it was over \$700,000.

Commissioner Morris asked how Management determined they could bring back three of the six firefighters working with the budget.

Chief Becker stated it was done in good faith, so talks could continue with labor, but other concessions still need to be made to attain the budget numbers set.

Vice-Chairman Reckwerdt asked if the other three firefighters would be rehired.

Chief Becker stated at this point the goal is to balance the budget and no decision has been made.

Vice-Chairman Reckwerdt asked how it was determined who would be rehired.

Chief Becker stated it was by longevity and military priority.

Motion approved unanimously 5 – 0.

- B. MOU with Lee County to Participate in Health Care Plan** – Chief Becker stated in order to get the health care plan on the table with Lee County Board of County Commissioners (BOCC) the Board would need to approve a letter to go to the BOCC with the District's interest to join their health care plan. If the item does not get on the agenda with the BOCC the District will lose its opportunity to participate. The plan has its annual sign up in January 2010.

Commissioner Morris asked when the decision was made to go from GreatWest to the Lee County plan. Commissioner Morris stated we have been with GreatWest for five years and questions the decision to want to switch to the Lee County plan.

Chief Becker stated there was no final decision; this just allows the District the opportunity to be accepted. When the District moved into the County's plan several years ago, a grievance was filed because the plans were not similar. The grievance was filed; arbitrated, and litigated by the District and at that time the District went to GreatWest.

Commissioner Morris asked why the grievance was filed.

Chief Becker stated that the County had a step program with their drug plan and the plan the District had at that time covered the drug plan 100%. Chief Becker noted that the County plan has now changed and resembles the GreatWest plan. The plan represented by the County could be a savings of approximately \$400,000.

Commissioner Morris noted that the plans should be spelled out before a final decision is made.

Chairman Scanlon motioned to approve the MOU to Lee County BOCC. Commissioner Schmid seconded.

Chairman Scanlon asked Chief Becker if the plan will see a savings of more than \$340,000.

Chief Becker stated yes, it would be approximately \$300,000. Chief Becker noted that if the claims continued to run low with GreatWest, the District will also see a savings.

Vice-Chairman Reckwerdt asked if GreatWest would be passing on an increase of 15% or more.

Chief Becker stated no increase number has been officially confirmed.

Commissioner Morris asked the union members to comment on the change.

FF Troy Mesick, DVP District 3 stated that the last quote from GreatWest was \$1,065,000 and the AETNA quote was \$960,000. The District has been running below the claims history and the District could possibly see another decrease from GreatWest. FF Mesick stated that GreatWest

allows the District different options within the plan i.e. deductibles, etc. that AETNA does not allow. Once you are in the Aetna plan that is the plan, no changes can be made.

Chairman Scanlon called for a vote.

Motioned approved unanimously 5 – 0.

C. Letter to BOCC to Participate in Health Care Plan – Chief Becker stated the letter was in direct coordination with the MOU.

Commissioner Schmid motioned to approve the letter to the BOCC. Sec./Treasurer Goodacre seconded.

Commissioner Morris stated she would like to see the letter state that the District is only agreeing to consider the plan, not committing them to the plan.

Attorney Pringle stated the letter does not obligate the District to join, but he will put a cover letter with the letter to state that the District is considering the possibility.

Motioned approved 3 to 2.

Commissioner Morris – Nay
Commissioner Schmid – Nay
Sec./Treasurer Goodacre – Aye
Vice-Chairman Reckwerdt - Aye
Chairman Scanlon – Aye

D. Renewal of Assistant Chief Evans' Contract – Chief Becker stated the revised contract was in the packet for the Board's consideration along with the salary survey requested from last month's commission meeting.

Commissioner Morris noted that at the last meeting it was requested that a one year contract be looked at as well and asked if Assistant Chief Evans would accept a one year contract.

Chief Becker stated it is important that the District shows their commitment to the management team.

Attorney Hament noted that the contract is a multiple year contract, with a five percent reduction being taken. The Board has the right to terminate without cause at anytime stated in the contract, section 19.

Commissioner Morris disagreed that it is not the same to have a one year contract versus a three year contract with a termination clause with a six month severance.

Commissioner Schmid motioned to renew the Assistant Chief's contract as written for three years. Sec./Treasurer Goodacre seconded.

Vice-Chairman Reckwerdt stated he would like to see a one year contract.

Commissioner Schmid stated he would like to see it for one year also.

Commissioner Morris stated she would like to see a month to month contract until the Board can resolve what they want to do going forward, especially with the investigation of the Chief beginning.

Vice-Chairman Reckwerdt stated past Fire Chief's and Assistant Fire Chief's have worked without a contract.

Chief Becker stated he is in possession of a letter from Assistant Chief Evans dated August 3, 2009 if Assistant Chief Evans does not get his contract renewed, he may retire effective November 13, 2009. Under the current contract proposal Assistant Chief Evans may retire during the term of the three year contract.

Sec./Treasurer Goodacre stated she does not agree with a month to month or a one year agreement with all the time Assistant Chief Evans has given to the District. The agreement should stand at a three year contract.

Commissioner Schmid asked if Assistant Chief Evans made the same concessions the firefighters did.

Chief Becker stated yes.

Attorney Hament explained the progression of the pay rate for Assistant Chief Evans.

Assistant Chief Evans stated he has served the District for approximately 29 years and he would not entertain a one year contract or work without a contract.

Chairman Scanlon called for a vote.

Motion failed 3 to 2.

Commissioner Morris – Nay
Commissioner Schmid – Nay
Sec./Treasurer Goodacre – Aye
Vice-Chairman Reckwerdt - Nay
Chairman Scanlon – Aye

Vice-Chairman Reckwerdt motioned to renew the Assistant Chief's contract for one year. No second. Motion died.

Chairman Scanlon motioned to approve a one year contract with Assistant Chief Evans with all provisions the same as the three year contract and after one year the Assistant Chief can renew or retire.

Attorney Pringle stated that Commissioner Schmid motioned to accept the three year contract and then voted against the motion. The past position of the Board was that if a member made the motion they would need to follow through with their motion. If they are not in support of their motion after discussion, they should withdraw the motion and make another motion if they desired. Attorney Pringle suggested that the motion maker withdraw his motion if he is not happy with the motion.

Commissioner Morris stated in the past the motion maker has voted against the motion, but it still passed, despite they voted against it.

Commissioner Schmid withdrew his motion to renew the three year contract with Assistant Chief Evans.

Attorney Pringle stated there were no other motions on the floor, so a new motion can be entertained. Attorney Pringle stated the contract is agreed to by the Chief and the Assistant Chief and if the Board decides to do something different then the motion should be a proposal to the Assistant Chief.

Sec./Treasurer Goodacre motioned to accept the three year contract. Chairman Scanlon seconded.

Motion failed 2 to 3.

Commissioner Morris – Nay
Commissioner Schmid – Nay
Sec./Treasurer Goodacre – Aye
Vice-Chairman Reckwerdt - Nay
Chairman Scanlon – Aye

Chairman Scanlon motioned to proposing a one year contract with Assistant Chief Evans with all provisions the same as the three year contract and after one year the Assistant Chief can renew or retire.

Motioned approved 3 to 2.

Commissioner Morris – Nay
Commissioner Schmid – Nay
Sec./Treasurer Goodacre – Aye
Vice-Chairman Reckwerdt - Aye
Chairman Scanlon – Aye

Chairman Scanlon asked Assistant Chief Evans if he would accept a one year contract with all the provisions of the three year contract.

Assistant Chief Evans stated he would get back with the Board.

Attorney Hament stated he would draft a one year contract with the same salary of \$134,000 which does reflect a five percent reduction in pay.

Chairman Scanlon asked that Assistant Chief Evans respond to the Chief by the regular commission meeting on October 20, 2009.

Attorney Pringle clarified that if Assistant Chief Evans makes his decision prior to the regular commission meeting, he doesn't have to wait until the commission meeting on October 20, 2009.

Commissioner Morris asked if the Chief is the only person that can suspend or terminate the Assistant Chief.

Attorney Hament stated that is the normal proceeding. The Board can direct the Chief to act, but it is the Chief's directive.

- E. Section 17 of Chief Mike Becker's Contract** - Attorney Pringle stated he and Attorney Hament prepared a memo that went out to the Board with the possible process on what the Board could do next regarding Article 17 of the Chief's contract. As a result of last month's request by the Board, a special meeting was scheduled for today for Attorney Pringle to present qualified investigators not associated with the District to proceed with the investigation of the allegations against Chief Becker. The Board will need to make several decisions:
- a. Investigation formal or informal,
 - b. Investigator to use,
 - c. Verify that the documents in the memorandum are what should be investigated; and,
 - d. Review the policy the District has for investigating employees.

Attorney Pringle reviewed the outline stated in the memo to the Board.

Attorney Pringle asked the Board if the attached allegations was what was being investigated.

Commissioner Morris stated yes they were and they should move on to the next item.

Attorney Hament stated the reason for the memo was to track the process so there is no misunderstanding what needs to occur. All the documents in the packet should be reviewed by the Board so they have all the background and exhibits. Attorney Hament noted that the rules and regulations for the District do not apply to Chief Becker, but the firefighter's bill of rights does apply.

Commissioner Morris asked why the District needed a lawyer and not just an investigator.

Attorney Hament stated some of the allegations implied legal issues. A lawyer can advise the Board if the investigation should be brought to a formal phase or not.

Attorney Pringle and Attorney Joshi reviewed the applicant's qualifications and costs related to the investigation.

Attorney Pringle stated that the goal of the investigator would be to gather all the facts, interpret the law as it applies, and come back to the Board with the findings and recommend if the investigation should become formal.

Discussion continued between the Board, Attorney Hament, Attorney Joshi and Attorney Pringle on the qualifications and fees for each candidate.

Chairman Scanlon motioned to retain Mr. Benson to do the informal investigation. Commissioner Schmid seconded.

Motion approved 3 to 2.

Commissioner Morris – Aye
Commissioner Schmid – Aye
Sec./Treasurer Goodacre – Nay
Vice-Chairman Reckwerdt - Nay
Chairman Scanlon – Aye

Attorney Pringle stated he would notify Attorney Benson.

Vice-Chairman Reckwerdt asked if the Board should motion to put Chief Becker on leave.

Attorney Hament stated administrative leave is a part of section 17 of the Chief's contract and at the Board's discretion they can take Chief Becker out of the workplace during the investigation.

Chairman Scanlon stated he does not think the Chief should be suspended during the informal investigation and the Board should wait for the outcome of the investigation.

Attorney Hament stated the process would be done in two stages. The first stage would be the informal investigation and then advisement by the Attorney if formal charges should be brought forth.

Vice-Chairman Reckwerdt stated past procedures was to put employee being investigated on leave until the outcome.

Chairman Scanlon motioned not to put the Chief on leave.

Commissioner Morris asked if the Board did nothing, business would be as usual, so a motion does not need to be made.

Attorney Pringle stated that was correct.

Attorney Hament cautioned the Board that they should not individually or collectively try to influence the investigation.

Public Input

FF Troy Mesick – DVP District 3 stated he was disappointed the Board did not put the Chief on administrative leave during the investigation process and he hopes now that District employees being investigated will be given the same treatment. FF Troy Mesick stated that if the District moves from GreatWest there will be a \$200,000 terminal fee.

Beach resident Flip Harby stated that not everyone on the Board received exhibit 4 from Margaret Banyan and Margaret did not meet with all the Board members during her employment at the District regarding the no confidence letter from the Union. Mr. Harby noted that the Assistant Chief contract has always been a three year contract and if the District is going to change that contract what are they going to do when the Union contract comes up next year. Mr. Harby stated that someone other than the taxpayers should pay for the investigation of the Chief if nothing comes out of it.

Beach resident Fran Myers stated she would like to thank the District for the good job they have done on the budget.

Adjournment

Call for adjournment of meeting.

Meeting adjourned at 5:01 PM October 15, 2009.