

**PALM BAY POLICE AND FIREFIGHTERS' PENSION PLAN
BOARD OF TRUSTEES
Special Meeting 10-14**

Held on the 27th day of October 2010 at Robert J. Conlan Professional Center, 1501 R. J. Conlan Blvd., NE, Suite 260, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

Richard B. Adams, Chairperson, called the meeting to order at the hour of 8:59 a.m.

ROLL CALL:

PRESENT

Richard B. Adams, Chairperson, Board Appointee
Timothy W. Lancaster, Vice Chairman, Police Elected
Douglas R. Smith, Secretary, Fire Elected
John J. Mazziotti, Trustee, City Councilmember
Milo Zonka, Trustee, City Councilmember

EXCUSED

Also in attendance was Ms. Kathy Adams, Board Administrator. Ms. Joyce Dias, Human Resource Officer, City of Palm Bay, and Firefighter David Ginsburg, President, Palm Bay Professional Firefighters, IAFF, Local 2446 and Firefighter Don Meyers. Mr. Cypen, Board Counsel, was telephoned at 9:01 a.m.

AGENDA REVISIONS:

There were no revisions to the agenda.

CONSENT AGENDA:

No consent items were listed.

BUSINESS:

1. **Discussion of the City of Palm Bay Proposed Ordinance 2010-8, Amendment Implementing Firefighter Pension Changes**-Mr. Adams said the meeting had been called so Mr. Cypen could address his concerns. Mr. Cypen was telephoned at 9:01 a.m. Mr. Cypen said the Ordinance is imposed due to agreement not being agreed by the City and the Firefighters' Union. The implementation date is the earlier of January 1, 2011 or upon ratification of the collective bargaining agreement. Mr. Ginsburg said it has not been ratified. Mr. Cypen made general reference to Section 55, page 1, reduction of contribution. He stated the rule is that you cannot cut back accrued benefits and benefits cannot be reduced below those benefits as of March 12, 1999. You can have a five percent contribution but not in derogation of the benefits in place on March 12, 1999. Mr. Adams said as a citizen and board appointee, his concern about the reduction in contribution is if the Fund hits another downturn in the market, won't the City have to make that up. Mr. Cypen said yes. Mr. Cypen said Section 55.07, page 2, (A)(1)(b), cannot apply to members already eligible for normal retirement. Anyone who has reached any of the four standards in 55.07,

(A)(1)(b), cannot be impacted by the change. He recommends the ordinance contain such statement. The board cannot legally administer this change, as written. There will need to be a two-fold actuarial study: one the ordinance as written and one as it must be interpreted by the board. He said he does not understand Section 55.07, (A)(1)(b)6. It sounds like it is okay going forward but then provides something else. It sounds as if they are trying to impact the benefits of those who have already reached normal retirement date. Mr. Adams asked if anyone had any questions. Mr. Cypen said the board must follow the law and whoever drafted this Ordinance partially accomplished this goal. Members eligible for normal retirement would have zero reduction in benefits, but a reduction in contributions. No matter what the Ordinance says, it cannot reduce the multiplier in Section 55.07, (A) (2)(b)2 below that on March 12, 1999. If the multiplier was two and one-half percent, then you cannot go to less than two and one-half percent; if three percent, you cannot go to less than three percent. On page 4 they are cutting back the \$25.00 supplement and probably cannot do that to some people based upon eligibility for normal retirement. Mr. Adams asked about taking away benefits paid with State funding. Mr. Cypen said that raises an issue on the State money, and they probably cannot do that. He said the City cannot take away a benefit paid by State funding unless it is replaced by something else, as that would give the City a prohibited credit. He addressed page 5, Section 55.07, (B)(2)(c). He said there are two problems with the supplement. First, it applies to everyone, and if it was agreed to use State funding, the Statutes would not allow that credit to the City. Second, again, it purports to take away a benefit from those who have reached eligibility for normal retirement. Mr. Zonka asked about page 9. Mr. Cypen said the Share Plan exists for future money, not existing money. As to Section 55.09 (A)-Disability, Mr. Cypen said you have to pay the greater of forty-two percent or the accrued benefit -- and there is no such provision. There is also a due process issue: the word "incurs" is not specific. What does "incurs" mean in this context. The Ordinance must be clear about whether the amendment applies. Section 55.09, (C) has the same impediment. With reference to Section 55.27, (C)(4), if you exclude the effect upon members eligible for normal retirement, you would not need this clause. Referring back to page 9, Mr. Cypen reiterated that the Share Plan is a new pool of money. The premium tax is paid annually. Mr. Cypen has a problem with the Share Plan in that there is not enough information. Section 55.29, (B)(3) for example, does not tell how it operates. Mr. Adams said Mr. Ginsburg stated there is about \$800,000 in reserves. Mr. Cypen said the Share Plan is created with "x" dollars from reserves, then subsequent funding comes in. He would make it dollar-specific. Mr. Ginsburg said four years of accrued money is another subject of impasse. The board is not a party to the litigation. Mr. Ginsburg said it deals with unspent money and it relates to the use of those funds as a Share Plan. Mr. Ginsburg said the City is ignoring the impasse proceedings. Mr. Cypen said playing devil's advocate, apparently the City had already agreed to the Share Plan, by this language. Mr. Smith said the City's proposal for reduced benefits is the same as the study the actuary did in August compared to Ordinance 2010-81. Mr. Adams said the board's actuary's study does not reflect the actuarial cost. If the actuary must do a study for the Ordinance, he must do two studies, one based on the Ordinance and one on the board's required interpretation. Mr. Cypen said the City should not adopt the Ordinance on second reading, unless it is revised. Mr. Zonka asked Mr. Cypen if he would rewrite the Ordinance, and he said no, because it appears still to be in negotiation. However, if everybody so agreed, he could rewrite the Ordinance. Mr. Cypen repeated that whoever drew this Ordinance was well versed on the subject. If the City is not voluntarily going back to the drawing board, the board should have Foster & Foster, Inc. do an impact statement based on this Ordinance and based on the board's required interpretation. Mr. Smith asked about the actuarial impact statement. Mr. Cypen said if they are uncomfortable, the board can

postpone it, if they haven't had time to review the proposed Ordinance. Mr. Lancaster asked if Mr. Cypen had anything to do with the writing of this Ordinance. Mr. Cypen said absolutely not. Mr. Lancaster said the board has never had a pension Ordinance drafted where Mr. Cypen did not have input. Mr. Cypen said he has never had one crammed down before. Mr. Lancaster said in the thirty years of the Plan, the past practice by the board has been to have ordinances drafted by the board attorney. He said this is a change in those practices for this one, and Mr. Cypen said he cannot recall a time when he was not consulted. Mr. Mazziotti asked if it was out of line for Mr. Cypen to have him call City Attorney Stokes to work out the language differences. Mr. Cypen said the city attorney can call him, and they can discuss it. Mr. Adams read the letter from the City dated October 14th. Mr. Cypen said the Ordinance was passed on first reading and was set for second reading. Mr. Adams said the board's actuary does not have a two week turnaround, and due to the board terminating its prior two actuaries, Foster & Foster will want to take extra care in preparation of any work. Previously the actuary had written details of what was finalized in negotiation and the actual benefits being presented for change. Mr. Cypen said if the impact study is not going to be done; the City should postpone the second reading and he can call City special counsel Jim Linn. Mr. Zonka said he was okay with that. Mr. Cypen said the actuary should be instructed not to start the study until the Ordinance is redrafted. If he and Mr. Linn can agree it would be ideal. If they cannot agree, Mr. Cypen will come back to the board. The actuary can then be instructed to prepare the impact statements referred to above. He said the first step would be for the attorneys to work together. Mr. Zonka presumes that the Ordinance has not changed from the study. He expressed areas of concern. Mr. Cypen said that's what he has just done. Mr. Cypen did not propose language, only concepts. Mr. Zonka said it was contract language. Mr. Cypen said he was talking about Ordinance language. Mr. Smith said he does not feel comfortable approving everything without an opinion from the attorney and actuary. Mr. Cypen said he can attempt to work out an agreement with the city's attorneys. Mr. Zonka stated if there are two opinions and two statements, then the Division of Retirement makes the final decision. Mr. Cypen said no, interpretation is up to the board. Mr. Smith, in light of the violations and illegalities, questioned what the board needed to do. Mr. Cypen said the board needs a clean, legal Ordinance, and needs to follow the law regardless of the Ordinance. If the City does not agree with that procedure, they can take the board to court. He said the board's actuary needs comments on this Ordinance, and someone needs to sit down and compare it to the original documents. Mr. Lancaster said he wants the legal side first. Mr. Cypen said part of the nuts and bolts is what provisions were in effect at time of implementation. Mr. Zonka asked who could do the review in talking about subsequent language matching the Ordinance. Mr. Adams said the board should give the actuary the Ordinance to determine if the items are the same, and then he can express his concerns to Mr. Cypen, who will take them to Mr. Linn. Mr. Cypen suggested that City staff should give Mr. Linn a call. The board's actuary needs to determine if the language is identical. Mr. Smith asked if there are any other legal issues about Ordinance 2010-81. There was discussion on the people impacted by the basic concepts. Mr. Cypen said somebody has to decide what the specific terms of the Share Plan are, it is not that complicated, but the terms must be stated. Mr. Cypen said Share Plans may be set up in different ways and items such as vesting must be addressed. Mr. Cypen said he has several examples of Share Plans. Mr. Cypen said share money is paid to members, and the City has no real interest in the matter. Firefighter Don Myers said he understood benefits could not be reduced for those that have reached normal retirement, but what about early retirement and eligibility. He said there are some twenty firefighters who may be impacted. Mr. Cypen said, that, to his knowledge, there is no case on protection for those eligible for early retirement. He declined to give an opinion. Mr. Cypen's telephone call

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ended at 10:06 a.m.

ADJOURNMENT:

Motion by Mr. Smith, seconded by Mr. Mazziotti to adjourn at 10:08 a.m. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea.


Richard B. Adams, Chairperson

ATTEST:


Douglas R. Smith, Secretary